92-1219

Supreme Court, U.S.
FILED
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No. 92-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

WILLIAM LEIGHTON,

Petitioner,

versus

THE DREXEL BURNHAM LAMBERT GROUP, INC. *et al.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

WILLIAM LEIGHTON
Petitioner
249 West 11th Street
New York, N.Y. 10014
(212) 255-0001

December, 1992

Questions Presented

(Rule 14.1(a))

1. Whether the order of the court of appeals for the Second Circuit dated September 17, 1992 should not be summarily vacated for being ultra vires, arbitrary, capricious, in violation of due process of law, and issued upon the motion of attorneys without standing to seek it.

2. Whether Lester L. Levy Esq., and his law partner, Stanley Nemser, Esq. should not be disciplined and sanctioned as provided by Rule 8.2 of this Court for having obstructed the course of justice in this Court in No. 87-304, October Term, 1987, William Leighton v. Beatrice Companies, Inc. et al., which is one of the causes for the Drexel bankruptcy.

List of Parties to the proceeding in the court of appeals

(Rule 14.1(b))

(See also the Amended Notice of Appeal, R.6a-8a).

1. Resolution Trust Corporation/Federal Deposit Insurance Corporation, by Thomas D. Barr, Esq.

2. Subclass A Claimants' Representative by Melvyn I. Weiss, Esq.

3. Drexel Burnham Lambert, Group, Inc., Debtor, and its subsidiaries, by Ira M. Millstein, Esq.

4. Securities and Exchange Commission, by Barry R. Goldsmith, Esq.

5. Subclass B Claimants' Representative by David Berger, Esq. and Stanley Nemser, Esq.

The subsidiary companies affiliated with the Debtor are :

Drexel Burnham Lambert Trading

Corporation; Drexel Burnham Lambert Trading Finance, Inc.; Drexel Burnham Lambert, Incorporated; BRR Incorporated; Deauville United Corporation; Double Oil and Gas, Incorporated; Drexel Burnham Lambert (Asia), Inc.; Drexel Burnham Lambert Capital Group, Inc.; Drexel Burnham Lambert Caribe International, Incorporated; Drexel Burnham Lambert Commercial Paper, Incorporated; Drexel Burnham Lambert International, Inc.; Drexel Burnham Lambert Investors, Corp.; Drexel Burnham Lambert MBI Corp.; Drexel Burnham Lambert Products Corp.; Drexel Investment Holdings, Inc.; Drexel Burnham Lambert Government Securities, Inc.; Drexel Burnham Lambert Realty Corp.; First DBL Corporation.

Contents of Petition

(Rule 14.1(c))

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Official and unofficial reports of opinions below

(Rule 14.1(d))

The district court's decision on the May 3, 1991 settlement is reported at 130 B.R. 910. The opinion of the court of appeals on the appeal of certain claimants from that decision of the district court is reported at 960 F. 2d 285. There have been no other reported decisions by the courts below.

Statement of the Grounds upon which the jurisdiction of this Court is invoked

(Rule 14.1(e))

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sec. 1254(1) and 2106.

Constitutional provisions, statutes, rules and decisions

(Rule 14.1(f))

28 U.S.C. Sec. 1254(1):

Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

28 U.S.C. Section 2106. Determination

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree or order, or require such further proceedings to be had as may be just under the circumstances.

28 U.S.C. Sec. 158. Appeals

(d) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section. (emphasis supplied).

Supreme Court Rule 8.

Disbarment and Disciplinary Action

* * * .2. The Court may, after

reasonable notice and an opportunity to show cause why disciplinary action should not be taken, and after a hearing if material facts are in dispute, take any appropriate disciplinary action against any attorney who practices before it for conduct unbecoming a member of the Bar or for failure to comply with these Rules or any Rule of the Court.

F.R.App. Proc. 38. Damages for Delay

If a court of appeals shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

Cases cited

Braley v. Campbell, 832 F. 2d 1504 (10th Cir., 1987)

Daily Income Fund, Inc. v. Fox, 464 U.S. (1984)

Marino v. Ortiz, 484 U.S. 301 (1987)

In re Sonnax Industries, 907 F.2d 1280 (2nd Cir., 1990)

United States v. Richardson, 418 U.S.166

Warth v. Seldin, 422 U.S. 490, (1975)

Weiss v. Temporary Investment Fund, Inc. 465 U.S. 1001 (1984)

Statement of the Case

(Rule 14.1(g)

Petitioner is claimholder No. 6532 and 6557 in the Drexel bankruptcy. The claims were filed before the bar date, November 15, 1990 and are set out in full in the appendix, R.135a ff. and R. 145a ff. No issue with respect to the merits of these claims is presented for review.

Tne Drexel bankruptcy is the result of Drexel's guilty plea, on September 19, 1989, to four counts of securities fraud and to two counts of mail fraud for which Drexel was sentenced to pay a total of $300,196,770.97 in fines and criminal penalties. The courts below have not taken judicial notice of this guilty plea and sentence. For example, in an opinion dated March 27, 1992, 960 F.2d 285, the court of appeals stated :

"The events causing the demise of Drexel are well-documented and need not be recounted here." Similarly, the district court's decision made no mention whatever of Drexel's guilty plea and sentence, R.85a.

In August, 1991, the district court (the Hon. Milton Pollack, Senior U.S.D.J.) held a hearing, jointly with the Bankruptcy Judge, (the Hon. Francis G. Conrad) on the proposed Securities Litigation Claims Settlement Agreement dated May 3, 1991 which it had "preliminarily" (i.e. ex parte) approved previously. After the hearing, a decision with consolidated findings of fact and conclusions of law was filed on August 20, 1991, R. 85a-135a, 130 B.R. 910 (1992). The decision did not articulate the jurisdictional basis of the district court's action. See below under Rule 14.1(i)).

In its decision, the district court specifically held that petitioner William Leighton had standing to object, R. 115a. The court also found that Michael Milken had no standing to object and that he had withdrawn his objection, R. 115a. The court divided the claims between Subclass A and Subclass B, noting that $607.5 million would be available to satisfy the claims of Subclass A and $202.5 million to Subclass B. R. 125a. This allocation was also noted by the appellate court, R.18a (see below). Neither court had judicially noticed that Milken was then serving a ten year sentence upon his plea of guilty to five securities violations. (In August, 1992, the sentence has been reduced to two years).

An appeal was taken by certain

parties aggrieved by the August 20, 1991 decision. Citing In re Sonnax Industries, Inc., 907 F.2d 1280 (2nd Cir., 1990). the appellate court overruled the Debtors' motion to dismiss for want of appellate jurisdiction, R.20a ff. and proceeded on a jurisdictional basis not approved by this Court, The entire decision will be found in the appendix, R. 9a-44a.

While the matter was pending before the appellate court, the district court held yet another hearing on a motion to add some 200 individuals, including Michael Milken, and some 600 partnerships and corporations owned or created by these individuals as "Identified Settling Parties". These persons and entities were not required to, and did not, intervene. They were not represented by counsel. Their names were added by the district court's

orders Nos. 20 and 31, filed on March 10 and April 29, 1992, respectively. These are the orders appealed from, R.6a-8a. The Identified Settling Parties allegedly committed $1,300,000,000.00 to the settlement. Most of that sum was allegedly contributed by Milken. No discovery was undertaken with respect to this contribution and the district court specifically restrained those persons who knew the source of that contribution, see Order No. 24, R. 72a-77a.

The "Identified Settling Parties" had not come forward until some six months after the district court's August 9, 1991 hearing on the settlement. This could be due to the fact that in October, 1991, their wrongdoing was described, in part, in a book by James B. Stewart entitled Den of Thieves. published by Simon & Schuster. An

excerpt on two full pages was published in The Wall Street Journal. Den of Thieves became a best seller and stayed on the best seller lists for about one year. Den of Thieves placed in the public record Milken's activities at Drexel's High Yield Bond Department at Beverly Hills, California and some of the deals that enriched him beyond belief. By making a contribution to the settlement of the Drexel bankruptcy, Milken sought to have his 10-year prison sentence reduced. In August, 1992, his sentence was reduced to two years, with a period of probation of three years to begin upon his release from prison, scheduled for March 1, 1993.

Before the Identified Settling Parties had come forward, petitioner's claims Nos. 6532 and 6557 were assigned to Subclass B. However, the $1.3 billion contribution by the Identified

Settling Parties was not allocated, in whole or in part, to Subclass B. It was allocated only to Subclass A. Therefore, assuming payment by Milken and his associates of the $1.3 billion, Subclass A would receive $1.9 billion and Subclass B would receive only $200 million.

Counsel for Subclass A is Melvyn I. Weiss, Esq. In 1984, Mr. Weiss was a petitioner in this Court as custodian for Gary Michael Weiss, see Melvyn I. Weiss, etc. v. Temporary Investment Fund, Inc., et al., 465 U.S. 1001 (1983). In that case, Mr. Weiss was represented by one of his law partners.

Co-counsel for Subclass B are David Berger, Esq. and Stanley Nemser, Esq. Mr. Nemser is the law partner of Lester L. Levy, Esq. who was lead counsel for the respondents-plaintiffs in the Beatrice case before this Court, please

see No. 87-304, October Term, 1987. Neither Drexel, nor Milken, nor any of the Identified Settling Parties were parties to the Beatrice litigation.

Meanwhile, the Judicial Panel for Multidistrict Litigation transferred to the district judge several actions that had been brought against Michael Milken and some of his associates in courts throughout the country. These were consolidated under Docket No. MDL 924, S.D.N.Y. However, these actions were not consolidated with, nor deemed related to, the Drexel bankruptcy even though the defendants, or some of them, were the same as the Identified Settling Parties in the bankruptcy. Messrs Weiss, Berger and Nemser were again appointed counsel for the plaintiffs and obtained an order from the district judge "preliminarily", i.e. ex parte, approving a settlement of MDL 924. At a

hearing on November 17, 1992, the district judge reserved decision on a motion by Messrs Weiss, Berger and Nemser to approve a "global settlement" of the claims against Milken et al. Petitioner orally submitted to the district judge that a federal court should not entertain the settlement offer of a Den of Thieves where no discovery of the profits realized by those in the den had been made. The notice with respect to the settlement of MDL 924 stated :

> This Notice is intended to inform all interested persons of important developments concerning the treatment of certain claims against Michael R. Milken ("Milken") and/or other employees of, and entities related to, Drexel Burnham Lambert Incorporated ("Drexel"). If you have a claim or are a member of one or more of the classes described below, you should carefully read this

notice."

In February, 1992, concurrently with MDL 924, Messrs Berger and Nemser started another lawsuit before the same district judge, Presidential Life Insurance Company v. Michael R. Milken et al., 92 Civ. 1151 (MP), hereinafter "Presidential". The complaint, on some seventy pages, alleged a variety of securities law violations on the part of Milken et al. and violations of the securities laws of practically every State of the United States. One month later, the suit was "settled" and a notice was published in the financial media addressed to readers who

> believe that they or members of their families have a claim against Michael R. Milken or other former employees of, or entities related in any way to, Drexel Burnham Lambert Incorporated. (Readers) should read this important notice carefully. (Readers') rights may be affected by

these legal proceedings, including the proposed settlement described below.

Presidential was not consolidated with the Drexel bankruptcy even though the Identified Settling Parties in the bankruptcy were named as defendants in Presidential. A settlement hearing was held by the district judge on July 14, 1992 and a judgment dismissing Presidential was entered on July 17.

Altogether, the district court held four hearings related to the same subject matter, (i) that of August 9, 1991 relating to the Drexel bankruptcy minus the contributions of the Identified Settling Parties, (ii) that of March 9, 1992 on those contributions totaling $1.3 billion, (iii) that of July 14, 1992 on the settlement of Presidential and (iv) that of November 17, 1992 on MDL 924.

Since petitioner could not have anticipated what the district court would or would not do with respect to Presidential and MDL 924, petitioner took an appeal from the orders finalizing the settlement of the Drexel bankruptcy. At issue were the rights of the classes on whose behalf Claims Nos. 9532 and 9557 had been filed by petitioner. On November 12, 1992, Subsequent to the taking of the appeals, the district court, on the motion of Messrs Berger and Nemser, struck the class allegations of these Claims and deprived thousands of unsuspecting shareholders of their rights, without notice or opportunity to be heard. By separate order entered on November 12, the district judge also refused to disqualify himself. This petition for certiorari does not seek review of the November 12 orders since these were not

before the court of appeals.

Prior to taking the appeal, petitioner sought leave to intervene in the bankruptcy proceeding. R.45a-58a. The district court denied this relief by handwritten order endorsed on the motion, R. 58a.

Rule 14.1(h)) is not applicable.

Basis for federal jurisdiction in the court of first instance

(Rule 14.1(i)

In an unusual arrangement, the district judge held a hearing jointly with the bankruptcy judge on August 9, 1991 on the settlement. The decision issued thereafter, R. 85a ff. did not specify the basis for the district court's jurisdiction.

On appeal by other aggrieved parties, the court of appeals held that the district court had properly withdrawn the securities claims from the bankruptcy court pursuant to 28 U.S.C. Sec. 157(d). However, the district court's decision did not examine these claims under the standards of the securities laws.

The appellate court's jurisdiction rests on its own interpretation of In re

Sonnax Industries, 907 F.2d 1280, R. 22a and not on 28 U.S.C. Sec. 158(d).

Argument

(Rule 14.1(j))

Point I. Petitioner had standing to take the appeal from the district court's denial of petitioner's motion to intervene

In its August 20, 1991, the district court held that petitioner had standing to object, R. 115a. Based on that holding and in order to avoid problems on appeal, petitioner sought leave to intervene, R.45a-58a, which the district court denied, R. 58a. The motion was based on the holding of this Court in Marino v. Ortiz, 484 U.S. 301 (1987). This Court then held that "denial of such a motion (is), of course, appealable", id. at 304. Neither the

district court, nor the court of appeals, explicated why Marino was not applicable.

To the extent that the court of appeals held that petitioner had no standing, its order should be summarily reversed with a direction that it consider Marino in the circumstances here present.

Point II. Petitioner had standing to take an appeal from the district court's final decision

The district court's August 20, 1991 decision was not the final decision in the Drexel bankruptcy. The final decision was made on April 29, 1992, R.78a-84a when some 200 individuals and some 600 partnerships and corporations were added as "Identified Settling Parties" to the judgment filed on March

10, 1992, R. 58a-70a.

Since these Identified Settling Parties were not intervenors in the bankruptcy, had not come forward in time for the August 9, 1991 settlement hearing and were beneficiaries of "release and injunction" provisions of the final decree, petitioner took the appeal for the purpose of bringing before the appellate court the matters pertinent to the bankruptcy.

Indeed, the appeal was fully briefed by petitioner and the Drexel debtors but these documents were disregarded by the court of appeals. Instead of proceeding on the basis of the certified record, the court of appeals relied on the self-serving affidavit of Stanley Nemser, Esq. as a basis for its determination that petitioner had no standing to take the appeal. The court of appeals

converted the proceeding before it from an appeal on the merits to oral argument on a motion filed by one who had no standing to do so in the first place.

No representative of the Drexel debtors or of the Identified Settling Parties appeared at that hearing and no papers were filed by them. The only person heard by the court of appeals in support of the motion was Mr. Nemser.

Point III. Certiorari should be granted because petitioner has no other avenue of review

F.R.App.Proc. 38 is applicable only to frivolous appeals. It is not applicable to an appeal filed by one whose standing to take it is being challenged by motion. For example, the appellant in United States v. Richardson, 418 U.S. 166, was found by this Court not to have had standing to

bring the action there involved. No sanctions were imposed upon Richardson and in favor of the United States

And in Warth v. Seldin, 422 U.S. 490, 502 (1975) this Court held that standing to sue must be assessed upon the standing of the named plaintiff and not upon the standing of unidentified class members.

Here, the court of appeals did not follow either Richardson or Warth for the purpose of analyzing the nature of the case. It did not hear the case on the merits as the Third Circuit had done in Richardson. It issued a broad injunction against petitioner creating more obstacles to the prosecution of Claims Nos. 6532 and 6557 that affect the legal rights of thousands of people. Since none of these persons had filed proofs of claim by the bar date,

November 15, 1990, it follows that the Subclass B claimants represented by Mr. Nemser have struck it rich.

The court of appeals ordered petitioner to pay $2,500 to "counsel for the appellees" without specifying the names of the recipients or their standing to seek that relief. Had it made such a specification, it would have had to determine that counsel had been entitled to seek the relief.

Evidently, the action of the court of appeals calls for review by this Court which has promulgated F.R.App. Proc.38, because petitioner has no other avenue of relief from the order of the court of appeals, R.1a-3a.

Since petitioner must anticipate the opposition of Mr. Nemser that certiorari be granted, it is apposite that the circumstances surrounding two grants of

certiorari in a recent securities case be recalled. In 1984, this Court granted certiorari and decided Daily Income Fund, Inc. et al. v. Fox,, 464 U.S. --- in the belief that it was then necessary to resolve a conflict between the Circuits. This has resulted in a sweeping decision which the Court followed in Weiss, etc. v. Temporary Investment Fund, Inc., 465 U.S. 1001.

Following that decision by this Court, Daily Income Fund did not proceed to trial on the merits. It was "settled" for some $200,000. "Settlement" of disputes between attorneys hardly calls for the grant of certiorari by this Court. But it happened in Daily Income Fund and in Temporary Investment Fund and is likely to happen again unless this Court takes action against those attorneys who do not disclose in their petition for

certiorari that their purpose in seeking the writ is to create leverage in "settlement" negotiations. Daily Income Fund was prosecuted by the law firm of Milberg Weiss Bershad Specthrie and Lerach of which Melvyn I. Weiss, Esq. the plaintiff in Temporary Investment Fund, is the senior partner. Mr. Weiss is counsel to the Ssubclass A Representatives in the case at bar.

Point IV. The obstruction of justice by certain respondents who were also respondents in No. 87-304 William Leighton v. Beatrice Companies, Inc.

In 1987, petitioner had petitioned this Court to grant certiorari in No. 87-304. The petition drew a joint response from fifteen attorneys and was finally decided in November, 1987.

Among the responding attorneys was

Lester L. Levy, Esq. who had been the plaintiffs' lead counsel in that litigation. Mr. Levy's law partner, Stanley Nemser, Esq. is co-counsel for the Subclass B claimants in the Drexel bankruptcy and has filed the motion which has resulted in the order of the the court of appeals here at issue.

Neither Drexel nor the Identified Settling Parties had been parties to the Beatrice litigation in Delaware. Their interest in the takeover of Beatrice by Kohlberg Kravis Roberts & Co. ("KKR") was to provide financing through the issuance of "junk bonds". The person responsible for marketing the junk bonds was Michael R. Milken, one of the Identified Settling Parties here. Without Milken's cooperation, the merger could not have been accomplished.

In connection with the merger,

Beatrice circulated a proxy statement to its shareholders. This document was issued jointly with the BCI Holdings prospectus that covered the newly issued BCI Preferred stock into which the Beatrice common stock was to be converted. The effective date of the merger was April 17, 1986. Prior to that date Beatrice common stock continued to be heavily traded on the New York Stock Exchange.

As plaintiffs' lead counsel, LESTER ~~Leon~~ L. Levy, Esq. had the responsibility (1) to review and comment on the proxy statement/prospectus as specifically provided by a memorandum of understanding signed by Beatrice and KKR, (2) to bring in, as parties, Drexel and the Identified Settling Parties for the purpose of providing them with releases from the claims asserted in the complaints and (3) to

engage in discovery with respect to Drexel's underwriting commitments relative to the junk bonds. Such discovery would have led to the conclusion that Drexel and Milken were then engaged in a massive securities and mail fraud to which Drexel pleaded guilty in 1989. Milken also pleaded guilty to several counts of securities fraud in 1989.

However, the presence of Drexel and Milken as parties in the Delaware litigation would have jeopardized the consummation of the merger and Mr. Levy's fee. Indeed, the proxy statement/prospectus disclosed that Beatrice had contracted "not to oppose" a $3,200,000.00 fee if awarded by the Delaware courts upon the application of plaintiffs' counsel, i.e. Mr. Levy.

Drexel and Milken wisely stayed away

from the Delaware litigation since they had sought and received warrants to purchase the common stock of BCI in addition to the underwriting fees for the junk bonds. On December 4, 1988, Barron's reported that the warrants were worth $850,000,000 and asserted that Drexel had not reported that sum as income in 1987.

When Drexel declared bankruptcy in May, 1990, the I.R.S. filed a huge claim against it but had to settle for a pittance. By the bar date for filing claims, petitioner filed Claims Nos. 6532 and 6557, R. 135a, 145a, in order to salvage what was left from the wreckage of Drexel's assets. The claims pertain only to Drexel's underwriting fees with respect to the junk bonds.

No claims were filed with respect to the warrants since these had been

distributed to the Identified Settling Parties which were not named as contributors to the Drexel estate until April 29, 1992.

When Mr. Levy joined in the 15-attorney response to the petition for certiorari in 87-304, he knew, or was presumed to know, of the warrant distribution to the Identified Settling Parties. He knew this from the prospectus which disclosed the fact in language that would have aroused the suspicion of any experienced securities lawyer. Nevertheless, he signed the brief in opposition to that petition for certiorari.

In short, Mr. Levy has obstructed the course of justice in No. 87-304 by joining in an opposition that was designed to and did cause this Court to deny certiorari. Would this Court have

denied certiorari if it had known that Drexel and Milken were then committing several serious securities crimes, that Mr. Levy had not engaged in the discovery necessary to reveal those crimes and that the Beatrice shareholders were about to be fleeced by the Identified Settling Parties ?

Wnen Mr. Nemser, Mr. Levy's law partner, consented that the Identified Settling Parties contribute $1,300,000,000 to the Drexel bankruptcy, he knew, or should have known, that this contribution was suspect and did not reflect these Parties' true liabilities to the estate. Mr. Nemser has not taken the deposition of any of these Parties. Even though he sued these Parties in Presidential, he did not take their deposition in that suit, either, and did not resort to any discovery device. Mr. Nemser did not take the deposition of

any of these Parties in MDL 924 which he settled for a fraction of the unknown liabilities of these Parties.

All of these settlements are designed to produce huge fees for Messrs Nemser and Levy aa Beatrice amply shows to be the case.

Conclusion

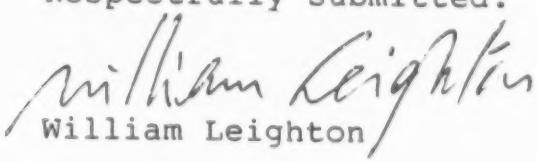
This Court does not sit to resolve issues of fact. Therefore, responsibility for making fact determinations rests with the lower courts, especially with the courts of appeals where the facts do not appear from the certified record. Here, the court of appeals has not made any findings of fact and, in the words of Rule 10.1.(a),

> it has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this

Court's power of supervision.

See also Braley v. Campbell, 832 F.2d 1504 (10th Cir;, 1987). For the above reasons, certiorari should be granted and the court of appeals' order of September 17, 1992 should be summarily vacated.

Respectfully submitted:



William Leighton

Petitioner

New York, New York
December, 1992

APPENDIX

(Rule 14.1(k)

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1992		
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Aug.13	Motion of Stanley Nemser to dismiss appeal	4a-5a
May 8	Petitioner's Amended Notice of Appeal	6a-8a
Mar.27	Opinion, U.S.C.A. 2d Cir., 960 F.2d 285 (1990)	9a-44a
Mar. 5	Petitioner's Notice of Motion to Intervene	45a-58a
Apr.16	Endorsement on motion Motion to Intervene in all respects denied - so ordered	58a

	Milton Pollack,	
	Senior U.S.D.J.	
Mar.10	Order No. 20,	58a-70a
	(dated March 9, 1992)	
	approving Settlement and	
	designating Identified	
	Settling Parties pursuant	
	to Joint Plan of	
	Reorganization	
Mar.23	Order No. 23	71a
	U.S.D.C., S.D.N.Y.	
Apr.3	Order No. 24	72a-77a
	U.S.D.C., S.D.N.Y.	
	and endorsement	
Apr.29	Order No. 31	78a-84a
	(dated April 24)	
	U.S.D.C., S.D.N.Y.	
	with Exhibit 'A'	

(continued)

1991	Order,130 B.R. 910	85a-135a
Aug.20	U.S.D.C., S.D.N.Y. Decision, Consolidated Findings of Fact and conclusions of Law,(excerpts)	
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Nov.13	Petitioner's Proof of Claim/Interest No. 6532	135a-144a
Nov.13	Petitioner's Proof of Claim/Interest No. 6557	145a-156a

RJM (SDNY 90-cv-6954 Pollack)

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second circuit, held at the United States Courthouse in the City of New York, on the 17th day of September, one thousand nine hundred and ninety-two.

PRESENT :

HON. ROGER J. MINER,

HON. FRANK X. ALTIMARI,

HON. JOHN M. WALKER, JR.,

Circuit Judges.

IN RE THE DREXEL BURNHAM LAMBERT GROUP, INC., ET AL.

Appellees,

WILLIAM LEIGHTON,

Appellant.

ON CONSIDERATION of the appellees' motion to dismiss the appeal and for sanctions and injunctive relief, it is hereby

ORDERED, that the appeal be, and it hereby is, dismissed for appellant's lack of standing, and it is further

ORDERED, that the appellees' request for sanctions be, and it hereby is granted under the provisions of Fed. R. App. P. 38, and appellant is directed to pay to counsel for appellees the sum of $2,500, and it is further

ORDERED, that the clerk's office be, and it hereby is, instructed not to file any further papers from appellant in this Court until the sanctions have been paid, and it is further

ORDERED that appellant be, and he hereby is, enjoined from instituting any further actions or appeals in connection with any matter related to the matters subject of the captioned action without first seeking leave of this Court, and it is further

ORDERED, that the crossmotion of appellant for consolidation, extension of time and sanctions be, and it hereby is, denied.

/s/ Roger J. Miner,

/s/ Frank X. Altimari,

/s/ John M. Walker, Jr.,

Circuit Judges.

Filed, September 17, 1992, United States Court of Appeals for the Second Circuit, Elaine B. Goldsmith, Clerk.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 92-5042

NOTICE OF MOTION

for dismissal of appeal, sanctions, and injunctive relief

In re THE DREXEL BURNHAM LAMBERT GROUP, Inc. et al.

Appellees

WILLIAM LEIGHTON,

Appellant

---

* * *

Judge or Agency whose order is being appealed :

Hon. Milton Pollack, Senior U.S.D.J.

Brief statement of the relief requested :

1. Dismissal of appeal for lack of standing and meritless and frivolous

appeal.

2. Imposition of sanctions.

3. Order providing for limited injunctive relief against Appellant enjoining him in connection with judicial approvals of settlements and confirmation of plan of reorganization of Drexel, and until sanctions are paid.

By : (signature of counsel)

/s/ Stanley Nemser

Appearing for Subclass B

Representatives, Subclass B and

Other Claimants-Appellees

Date : August 13, 1992

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re

THE DREXEL BURNHAM LAMBERT GROUP,et al.

90 Civ. 6954 (MP)

Chapter 11

Case No. 90 B 10421 (FGC)

v.

WILLIAM LEIGHTON,

Claimant, Objector,

and Applicant for Intervention.

AMENDED NOTICE OF APPEAL

Notice is given that William Leighton hereby appeals to the United States Court of Appeals from the Order of this Court, dated April 16, 1992 denying him leave to intervene in this action for the purpose of appealing the final decision of this Court in this

action.

Notice is further given that William Leighton hereby appeals to the United States Court of Appeals for the Second Circuit from the final decision herein consisting of (1) the Order No. 20 filed on March 10, 1992 Approving Settlement and Designating Identified Settling Parties Pursuant to the Joint Plan of Reorganization, (2) the Order No. 23 filed on March 23, 1992 amending the list of Identified Settling Parties determined by Order No. 20 and (3) the Order No. 31 filed on April 29, 1992 listing the Final Exhibit 'A' of Identified Settling Parties entitled to the benefits of the release and injunction provisions described in Sections 12.2 and 12.3 of the Second Amended and Restated Joint Plan of Reorganization for the Debtors under

Chapter 11 of the United States

Bankruptcy Code.

/s/William Leighton
249 West 11th Street
New York, N.Y. 10014
(212)255-0001

May 8, 1992

to : Thomas D. Barr, Esq.
Cravath, Swaine & Moore
825 Eighth Avenue
New York, N.Y. 10019-7415

Melvyn I. Weiss, Esq.
Milberg Weiss Bershad
Specthrie & Lerach
One Pennsylvania Plaza
New York, N.Y. 10119-0165

Ira M. Millstein, Esq.
Weil Gotshal & Manges
767 Fifth Avenue
New York, N.Y. 10153

Barry R. Goldsmith, Esq.
Securities and Exchange Commission
(Stop 4-2)
Washington, D.C. 20549

David Berger, Esq.
Berger & Montague
1622 Locust Street
Philadelphia, Pa. 19103

Stanley Nemser, Esq.
Wolf Popper Ross Wolf & Jones
845 Third Avenue
New York, N.Y. 10022

OPINION, U.S.C.A., 960 F.2d 285 (1992)

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

(Argued : January 27, 1992
Decided : March 27, 1992)

In re : The Drexel Burnham Lambert Group, Inc. et al.

Debtors.

SECURITIES AND EXCHANGE COMMISSION

Plaintiff-Appellee,

v.

THE DREXEL BURNHAM LAMBERT GROUP, Inc. et al.

Defendants-Appellees.

SECURITIES LITIGATION CLAIMANTS;

SUBCLASS A REPRESENTATIVES;

SUBCLASS B REPRESENTATIVES;

FEDERAL DEPOSIT INSURANCE CORPORATION;

RESOLUTION TRUST CORPORATION;

OFFICIAL CREDITORS COMMITTEE OF DREXEL BURNHAM LAMBERT GROUP, INC.:

OFFICIAL CREDITORS COMMITTEE OF DREXEL BURNHAM LAMBERT INCORPORATED;
OFFICIAL CREDITORS COMMITTEE OF DREXEL BURNHAM LAMBERT TRADING CORPORATION;
EQUITY COMMITTEE OF THE DREXEL BURNHAM LAMBERT GROUP, INC.;

Appellees,

HART HOLDING COMPANY, INC.;
REEVES INDUSTRIES, INC.;
LIGGETT GROUP INC.; LIQUID GREEN TRUST;
WILLIAM FRIES, II, JOHN LIPPITT;
JACQUELYN TRIBOLET; WILLIAM NELSON HARRIS, on behalf of themselves and all members of the Pacific Lumber Company shareholder plaintiff class;
CITIBANK; DEN DANSKE BANK; LLOYDS BANK P.L.C.; CANADIAN IMPERIAL BANK OF COMMERCE,

Appellants.

Before :

ALTIMARI, WALKER and McLAUGHLIN,

Circuit Judges.

Appeal from an order of the United States District Court for the Southern District of New York (Pollack, J.) certifying class and subclasses for settlement purposes, and approving settlement agreement. Held: the district Court did not err in certifying the class and subclasses, and in approving settlement agreement.

Affirmed.

(Names of attorneys and
their affiliation are omitted)

McLAUGHLIN, Circuit Judge:

Appellants are three members of a proposed class of plaintiffs that have asserted claims against defendants,

appellees Drexel Burnham Lambert Group, Inc. and its subsidiaries (collectively "Drexel"). Appellants ask us to reverse an order entered in the United States District Court for the Southern District of New York (Milton Pollack, Senior District Judge) certifying the proposed class and two subclasses, and approving a settlement agreement (the "Settlement Agreement") of the class' claims. We find that the district Court did not err in certifying the class and subclasses and in approving the Settlement Agreement, and therefore affirm.

BACKGROUND

The events causing the demise of Drexel are well-documented, and need not be recounted here. We summarize only the facts that are necessary to understand the dispute before us.

In September 1988, the Securities

and Exchange Commission ("SEC") filed a civil enforcement action against Drexel and several of its top ranking officials, alleging that Drexel had violated federal law in various securities transactions. After intense negotiations, Drexel agreed to create a $350 million fund to be administered by the SEC (the "SEC Fund") in exchange for dismissal of the complaint. The SEC was to distribute the Fund to the victims of Drexel's illegal transactions in "junk bonds".

Drexeel paid $200 million into the SEC Fund in September 1989, and agreed to pay the remaining $150 million in two installments over the next three years. However, in February 1990, (before Drexel had paid any of the remaining $150 million), Drexel filed a petition for relief under 11 U.S.C. Sec. 1101 et

seq., in Bankruptcy Court for the Southern District of New York. The SEC immediately filed a bankruptcy claim for the remaining $150 million Drexel owed the SEC Fund. Many other potential claimants followed suit, and by November 1990, over 15,000 bankruptcy claims had been filed against Drexel. Among these claims, 850 arose out of Drexel's actions in buying, selling and underwriting securities (the "Securities Claims").

To facilitate settlement, Judge Pollack withdrew the Securities Claims from the bankruptcy Court pursuant to 28 U.S.C. Sec. 157(d).[1/] Early attempts to settle each claim individually proved fruitless. Thus, the district Court ordered the establishment of the Securities Litigation Claimants Group ("SLCG") comprising the Federal Deposit

Insurance Corporation ("FDIC"), the Resolution Trust Corporation ("RTC") and two groups of claimants in other securities related actions against Drexel. One group consists of claimants in various derivative suits brought against Drexel (the "Derivative Plaintiffs"). The other group consists of claimants who brought actions against Drexel that were later consolidated

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1/ 28 U.S.C. Sec. 157(d) permits a district judge to "withdraw, in whole or in part, any case or proceeding . . . if the (district judge) determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regarding organizations or activities affecting interstate commerce." Because the Securities Claims necessitated an examination of federal securities laws, Judge Pollack properly withdrew those claims from the bankruptcy Court.

before Judge Pollack by the Panel on Multidistrict Litigation (the "Boesky Litigation Plaintiffs"). See In re Ivan F. Boesky Securities Litigation, MDL Dkt No. 732 (MP). The SLCG's mission was to negotiate with Drexel and Drexel's non-securities claimants (the "Fixed Creditors") to settle all claims against Drexel.

The parties negotiated throughout January and February. On February 18, 1991, the SLCG advised the district Court that the parties had agreed to the broad framework of a settlement. The parties then engaged in round-the-clock negotiations over the next three months to flesh out the terms of the settlement.

On May 3, 1991, the parties arrived at the Settlement Agreement at issue here, an agreement as intricate as it is

lengthy. It contains thirty-three single-spaced pages painstakingly describing the settlement method. The Agreement requires the 850 securities claimants to be certified as a mandatory, non-opt-out class, which in turn is divided into two subclasses. The principal members of subclass A include several failed banks currently administered by the FDIC or the RTC, and the Derivative Plaintiffs. Subclass B consists primarily of the Boesky Litigation Plaintiffs.

Under the Settlement Agreement, Drexel must pay the $150 million balance it owes the SEC Fund. The $350 million SEC Fund will then be divided between the subclasses, with subclass A receiving seventy-five percent ($262,5 million) and subclass B twenty-five percent ($87.5 million). The entire

class will also receive a share of Drexel's remaining assets (the "Class Assets") which will be divided between the subclasses in the same 75%-25% ratio as the SEC Fund. Subclass A's total recovery from the SEC Fund and the Class Assets is estimated at $600 million, while subclass B's total recovery is estimated at $200 million. Finally, the Settlement Agreement provides for subclass A and Drexel to "pool" their recovery from lawsuits they have brought against Drexel's former directors and officers (the "Pooled Recovery"). The Settlement Agreement does not contain any provision enabling subclass B to share in the Pooled Recovery, and enjoins members of subclass B from bringing any future actions against the directors and officers.

The district Court scheduled an August 9, 1991 hearing on the fairness of the Settlement Agreement. Notice of the hearing was sent to each of the securities claimants, and was published in six different newspapers throughout the United States. Only eight of the 850 proposed class members filed objections. After listening to their challenges, the district Court issued an order certifying the class and approving the Settlement Agreement.

Three of the eight objecting class members now appeal from the district Court's order. Appellants first contend that the district court erred in certifying the mandatory non-opt-out class and subclasses. Second, they maintain that the district court erroneously approved the Settlement Agreement. We reject both arguments and

thus affirm the order of the district Court.

DISCUSSION

1. Appealability

Drexel has moved to dismiss this appeal claiming that the district Court's order is not final. In support of its motion, Drexel points to the district Court's order, which states :

> By conclusively resolving the Securities Litigation Claims, the Settlement eliminates one of the most significant hurdles in the way of resolution of these chapter 11 cases. In the absence of the Settlement, there could be no (reorganization) Plan and indeed, no successful and prompt resolution of these chapter 11 cases. * * *
> (However, t)he Settlement, which sets forth the requisite elements to

> be contained in the (reorganization) Plan, does not "lock up" the terms of the Plan because * * * the Settlement is conditioned upon confirmation of the Plan * * *

In re Drexel Burnham Lambert Group, Inc. 130 B.R. 910, 926, 927 (S.D.N.Y.), "Drexel I" (emphasis added). Because the district Court acknowledged that the Settlement Agreement is "conditioned upon confirmation" of Drexel's reorganization plan, Drexel argues that the district Court's order approving the Settlement Agreement is not final. We disagree.

While Drexel's point might be well-taken in the ordinary realm of civil litigation, it must be emphasized that this appeal arises in a bankruptcy context. We have traditionally accorded a more flexible definition to concepts

of finality and appealability in bankruptcy cases. In re Sonnax Industries, Inc., 907 F. 2d 1280 (2d Cir., 1990). As we noted in Sonnax, a looser standard of appealability is necessary because :

> a bankruptcy proceeding is umbrella litigation often covering numerous actions that are related only by the debtor's status as a litigant and that often involve decisions that will be unreviewable if appellate jurisdiction exists only at the conclusion of the bankruptcy proceeding.

Id. at 1283 (citations omitted). We held in Sonnax that an order in a bankruptcy case is appealable if the order "finally disposes of (a) discrete dispute within the larger case." Id. (emphasis in original) (citations

omitted). There is no question that the order approving the Settlement Agreement addresses a "discrete dispute". As the district Court noted, the Settlement Agreement conclusively resolves the Securities claims. See Dexel I, 130 B.R. at 926. Our inquiry focuses on the first prong of the Sonnax test: whether the order "finally disposes" of the Securities Claims.

Under Sonnax, our determination of the finality of the district Court's order depends on whether appellants will have another chance to assert their objections to the Settlement Agreement. After careful scrutiny, we find that appellants will not have that second chance. They will be unable to participate further in Drexel's reorganization proceedings.

The bankruptcy code allows a

claimholder to participate in a debtor's reorganization plan if the claimholder's interests are "impaired" by the plan. 11 U.S.C. Sec. 1126(f). If the claimholder's interests are "unimpaired", the claimholder is "conclusively presumed to have accepted the plan," and his participation in or approval of the reorganization plan is not necessary for the plan to gain confirmation by the bankruptcy Court. Id. A claimholder's interests are "unimpaired" if the reorganization plan leaves unaltered, the legal, equitable, and contractual rights to which such claim or interest entitles the holder. * * *" Id., Sec. 1124(1).

Here, the district Court found that Drexel's reorganization would not alter or otherwise infringe the class members' rights, and that the Settlement

Agreement "establishe(d) the legal, equitable and contractual rights of al: (c)lass members" regarding Drexel. Drexel I, 130 B.R. at 928. Thus, the Court held that the class members were "unimpaired" within the meaning of 11 U.S.C. Sec. 1124(1). Accordingly, because appellants are "unimpaired" claimants, they will be unable to participate in Drexel's reorganization proceedings. It follows that the order approving the Settlement Agreement finally disposes of appellants' claims, and we may address appellants' objections to the Settlement Agreement.

II. Class Certification

In determining whether a class should be certified, a district Court must first consider each of the factors sets forth in Fed. R. Civ. P. 23(a) :

> (1) the class is no numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

If each element of Rule 23(a) is satisfied, the district Court must then determine whether class certification is appropriate under Fed. R. Civ. P. 23(b). We will overturn a district Court's decision to certify a class only if the district Court abused its discretion, e.g. Johnpoll v. Thornburgh, 898 F.2d 849, 852 (2d Cir. 1990). We hold that the district Court certified the class

in accordance with Rule 23(a) and (b), and thus affirm the class certification.

A. Rule 23(a)

1. Impracticability of Joinder

The proposed class is clearly so numerous that joinder is impracticable. The entire class comprises nearly 850 claimants dispersed throughout the United States. Subclass A consists of more than 600 claimants, while subclass B consists of over 160 claimants. Individual adjudication of each claim would take many years and would dramatically increase the legal expenses for all of the parties. Joinder of all claims into one proceeding would be expensive, time-consuming and logistically unfeasible. Thus, rule 23(a)(1) has been satisfied.

2. Common Questions of Law or Fact

As the district Court noted, there

are several questions that are common to each class and subclass member. Among these questions are:

> 1) whether Drexel is liable under federal or state securities laws for its role in buying, selling and underwriting securities to the putative class and subclasses;
>
> 2) whether the putative class and subclass members were damaged by Drexel's conduct;
>
> 3) the status of the putative class and subclass members' claims relative to the claims of Drexel's fixed Creditors.

See Drexel I, 130 B.R. at 919. there is nothing in the record to persuade us that these common questions do not exist. Accordingly, rule 23(a)(2) has been met.

3. Typicality

Rule 23(a)(3) is satisfied when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability. See Eisen v. Carlisle & Jacquelin, 391 F.2d 555, 562 (2d Cir. 1968), vacated on other grounds, 417 U.S. 156 (1974). Charles A. Wright et al., 7A Federal Practice & Procedure, Sec. 1764 at 243 (1986). Here, each class member's claim is based on Drexel's purported violation of securities laws. Each claim must be satisfied from a limited fund of assets. Members of the subclasses share an interest in establishing Drexel's liability for violations of federal and state law, and achieving the maximum amount of recovery for their particular subclass.

Despite this strong showing of typicality, appellant Liggett Group Inc. ("Liggett") challenges the district Court's finding. Liggett points out that it is ineligible to share in the distribution of the SEC Fund because its claims against Drexel do not arise from transactions involving junk bonds, but rather are based solely on Drexel's allegedly fraudulent sale of commercial paper to Liggett. Thus, Liggett argues that its claims are not typical of other members of subclass B, who may draw from both the SEC Fund and the class Assets. Essentially, Liggett fears that because it cannot share in the SEC Fund, it will obtain a lesser recovery than other members of subclass B. We find that Liggett's qualms are premature.

The Settlement Agreement earmarks twenty-five percent of both the SEC Fund

and the Class Assets for subclass B, as a whole. The Agreement does not require that each subclass member receive the same percentage as his fellow subclass members from the SEC Fund and the Class Assets. Indeed, the Agreement does not address the rights of individual subclass members. Moreover, the Settlement Agreement does not provide for immediate distribution of the subclass' recovery to individual subclass members. Actual distribution will occur only after Drexel's reorganization is completed, and will be supervised by the district Court. At that time, Liggett can seek a higher percentage of the class Assets to compensate for its inability to share in the SEC Fund. Accordingly, we reject Liggett's argument that the Settlement Agreement manifests lack of typicality

within the class.

4. Adequacy of Representation

Under Rule 23(a)(4), adequacy of representation is measured by two standards. First, class counsel must be "qualified, experienced and generally able" to conduct the litigation. Second, the class members must not have interests that are "antagonistic" to one another. See Eisen, 391 F.2d at 562. Appellants do not dispute that the first prong of the Eisen test has been met. They focus their attack on the second prong, arguing that their interests substantially conflict with the rest of subclass B. Again, we disagree.

Aside from LIggett's flawed argument that it will necessarily obtain a smaller recovery than other subclass B members, appellants have not offered any proof that their interests are

antagonistic to the remainder of subclass B. To the contrary, the record unequivocally indicates that all members of subclass B (including appellants) share a common interest in showing that Drexel violated federal and state securities laws. All members of subclass B similarly wish to obtain the highest possible recovery for that subclass. In the absence of a showing of a genuine conflict between appellants and subclass B, we reject appellants' argument that rule 23(a)(4) has not been satisfied.

B. Rule 23(b)

Having found that the prerequisites to a class action prescribed by Fed. R. Civ. P. 23(a) were present, the district Court then certified the class and subclasses under Fed. R. Civ. P. 23(b)(1)(B). We agree that this

certification is appropriate.

Rule 23(b)(1)(B) permits a class action to be maintained if a congeries of individual actions would "impair or impede" the interests of other members of the putative class. See Robertson v. National Basketball Association, 556 F.2d 682, 685 (2d Cir. 1977). This test is met here. Drexel's assets to satisfy the Securities claims are finite. A succession of individual actions to determine Drexel's liability on each claim would involve costly litigation, thereby depleting Drexel's already limited resources. The diminution of Drexel's estate from protracted litigation would doubtless reduce the amount ultimately recovered by each member of the putative class.

We recognize that the limited fund here is quite different from the limited

fund present in most class actions under Rule 23(b)(1)(B). Because Drexel is in bankruptcy, its assets will not be distributed on the "first come, first served" basis that usually warrants class treatment under Rule 23(b)(1)(B). See Wright, Sec. 1774 at 441-443. Accordingly, a mandatory class action will not be appropriate in most bankruptcy cases. However, even though Drexel's assets will not be distributed to claimants until final approval of Drexel's reorganization plan, some members of the putative class might attempt to maintain costly individual actions in the hope and, perhaps, the belief that their claims are more meritorious than the claims of other class members. A mandatory class action under Rule 23(b)(1)(B) is thus necessary here to prevent claimants with such

motivations from unfairly diminishing the eventual recovery of other class members.

For the same reasons that we find that the class can be maintained under Rule 23(b)(1)(B), we hold that the district Court did not abuse its discretion in prohibiting any member of the putative class to opt out of the class. To allow a class member to opt out would involve costly litigation to estimate the amount of that member's claim, thereby reducing Drexel's already limited fund of assets.

We are not unaware of the Supreme Court's statement in Phillips Petroleum Co. v. Shutts, 472 U.S. 797 (1985), that "due process requires at a minimum that an absent plaintiff be provided with an opportunity to remove himself from the class by executing and returning an 'opt

out' or 'request for exclusion' form to the Court." Id. at 812. Shutts mandates that a plaintiff be permitted to opt out of a proposed class when the Court does not have personal jurisdiction over the plaintiff. Id. at 811-812. Here, appellants have already submitted to the Court's jurisdiction by filing claims against Drexel. Because there is no question that the Court has jurisdiction over appellants, Shutts is inapposite. Thus, the district Court did not abuse its discretion in denying appellants the opportunity to opt out of the class.

III. Approval of the Settlement Agreement

We will ordinarily defer to a district Court's approval of a class action settlement unless there is a "clear showing" that the district Court

abused its discretion. E.g. TBK Partners, Ltd. v. Western Union Corp., 675 F.2d 456, 463 (2d Cir. 1982); City of Detroit v. Grinnell Corp., 495 F.2d 448, 454-55 (2d Cir. 1974). However, where, as here, the district Court simultaneously certifies a class and approves a settlement of the action, we will more rigorously scrutinize the district Court's analysis of the fairness, reasonableness and adequacy of both the negotiation process and the proposed settlement. Weinberger v. Kendrick, 698 F.2d 61, 73-74 (2d Cir 1982), cert. denied, 464 U.S. 818 (1983).

The district Court must consider many factors, including the complexity of the ltigation, comparison of the proposed settlement with the likely result of litigation, experience of

class counsel, scope of discovery preceding settlement, and the ability of the defendant to satisfy a greater judgment. Id.; see also Grinnell, 495 F.2d at 463. We conclude that the district Court correctly held that these factors warranted approval of the settlement agreement.

This is a complex case. There are many plaintiffs trying to maximize their own recovery, and there is a defendant with a limited fund to satisfy all claims. Prolonging the negotiation process will increase Drexel's litigation costs, with a consequent decrease in the size of the fund. Class counsel are amply experienced in complex securities cases, and have analyzed countless documents and depositions to determine the amount of Drexel's assets and the strength of the class' claims.

The negotiation process involved lengthy arms-length discussions between the class counsel, Drexel, and Drexel's fixed Creditors. The district Court extensively supervised the negotiations. Finally, it is doubtful that Drexel could withstand greater exposure than that already enumerated in the Settlement Agreement. Accordingly, we believe that the Weinberger test has been met.

We need not toil over appellants' argument that their absence from the negotiations irreparably tainted the settlement process. Had the district Court permitted each securities claimant to take part in the negotiations, it is unlikely that any agreement at all could have been reached. We will defer to the district Court's management of the case, particularly because the district judge

has had substantial experience in supervising complex securities cases. He has presided over both the SEC action against Drexel, and other cases involving Drexel and its former officers and directors. He knows the difficulties the class has had in proving its claims, and is aware of Drexel's financial straits. Thus, we will not second guess his decision to allow the SLCG alone to negotiate with Drexel.

Finally, appellants argue that the district Court should have stricken the provisions of the Settlement Agreement that (a) enjoin subclass B from bringing any future actions against Drexel's directors and officers, and (b) allow only subclass A and Drexel to share in the Pooled Recovery. Again we are not persuaded.

In bankruptcy cases, a Court may enjoin a creditor from suing a third party, provided the injunction plays an important part in the debtor's reorganization plan. See In re: A.H. Robins Co., 880 F.2d 694, 701 (4th Cir.), cert. denied, 493 U.S. 959 (1989). The Settlement Agreement is unquestionably an essential element of Drexel's ultimate reorganization. In turn, the injunction is a key component of the Settlement Agreement. As the district Court noted, the injunction limits the number of lawsuits that may be brought against Drexel's former directors and officers. This enables the directors and officers to settle these suits without fear that future suits will be filed. Without the injunction, the directors and officers would be less likely to settle. Thus,

we hold that the district Court did not abuse its discretion in approving the injunction.

We reject appellants' argument that they should be permitted to share in the Pooled Recovery. When approving a settlement of a class action, a district judge need not ensure that the defendant designate a particular source of its assets to satisfy the class' claims. Rather, the district Court need only examine whether the amount recovered by the class was fair in light of the Weinberger and Grinnell factors that we have already discussed. Because we find that these factors have been satisfied, we hold that the district Court did not err in denying appellants' request to share in the Pooled Recovery.

CONCLUSION

The district Court properly certified the mandatory non-opt-out class and subclasses in accordance with Fed. R. Civ. P. 23(a) and correctly allowed the class action to be maintained under Fed. R. Civ. P. 23(b)(1)(B). The negotiation process leading to the Settlement Agreement was fair. The Settlement Agreement reflects the substantial efforts of all parties involved, and reasonably balances the competing interests of the parties. Accordingly, we hold that the district Court did not err in certifying the mandatory non-opt-out class and subclasses, and in approving the Settlement Agreement.

AFFIRMED.

Filed : March 26, 1992,

U.S.D.C., S.D.N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re

THE DREXEL BURNHAM LAMBERT GROUP, Inc. et al.

90 Civ. 6954 (MP),

Case No. 90 B 10421 (FGC),

Chapter 11, Jointly administered

William Leighton,

Claimant, Objector. and Applicant for Intervention

NOTICE OF MOTION

Sirs :

Please take notice that at 2 P.M. on April 10, 1992, in Room 1305, U.S. Courthouse, Foley Square, New York, N.Y., the undersigned Claimant and

Objector will move this Court (the Hon. Milton Pollack, Senior U.S.D.J.) for leave to intervene in this action for the purpose of appealing the final decision of this Court consisting of the Decision and Order of August 20, 1991, as amended, [1/] and the Order of March 9, 1992, as subsequently amended. The reason for this application is the decision in Marino v. Ortiz, 484 U.S. 301 (1982).[2/] In support of this application, applicant states :

1. On March 10, 1992, Order No. 20 was entered on the docket "Approving Settlement and Designating Identified Settling Parties pursuant to the Joint Plan of Reorganization". As recited therein, the Debtors, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation and Milberg Weiss Bershad Specthrie and Lerach

(collectively,the "Pool Administrators") had jointly moved this Court by oral motion made in open Court ("Joint Motion") on February 14, 1991 (sic).

This procedure has violated the rights to Due Process of Law of those affected by the Joint Motion, i.e. the Drexel creditors, among whom are the persons covered by Claims Nos. 6557 and 6532.[3/] The Pool Administrators have not given this claimant [4/] notice of their intention to present the Joint Motion as required by Civil Rule 3 of this Court, (implementing F.R.Civ.P. 7(b)(1)). Nor did the Order of February 14, 1992, giving Notice of the Hearing on the Joint Motion, recite any reasons why the Court had not proceeded as required by Civil Rule 3. The Pool Administrators have not given the

objectors notice of the settlement of an order upon the Court's oral decision made at about 4 P.M. on March 9, 1992.

2. The Executive Committee for Subclass B Allocation and Administration which was appointed by this Court's Order No. 6 of July 18, 1991, has not joined in the Joint Motion. The Executive Committee has not filed written objections or a statement of position with respect to the Joint Motion. Nor has the Committee participated in the drafting of Order No. 20. This constitutes inadequate representation of Subclass B. For want of adequate representation, the Subclass B claimants have been excluded from the $1.3 billion benefit conferred upon Subclass A by Order No. 20. The Subclass B claimants have not received any consideration in exchange for releasing

the Identified Settling Parties from

> any and all claims, obligations, rights, causes of action and liabilities which the Debtors, the Pool Administrators and any holder of a Claim against or Equity Interest in the Debtors have asserted or may be entitled to assert, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, based in whole or in part upon any act or omission or other occurrence that has taken place on or prior to the Consummation Date of the Plan in any way relating to the Debtors, * * *

3. The "Identified Settling Parties" listed on Exhibit A to Order No. 20 have not complied with Bankruptcy Rules 7019, 7020, 7021 and 7024, hence they cannot be deemed to be "Controlled Entities". Only persons, partnerships and corporations that are subject to the jurisdiction of the Court can be deemed to be "Controlled Entities". Sections 12.2 and 12.3 of the Second Amended and Restated Joint Plan of Reorganization by the Debtors do not and

cannot supersede the said Bankruptcy Rules 7019, 7020, 7021 and 7024.

The Debtors should have filed the Joint Motion in Bankruptcy Court in connection with their application for the confirmation of the Second Plan. That would have brought before the Bankruptcy Court the issue whether Sections 12.2 and 12.3 of the Second Plan may preempt Bankruptcy Rules 7019, 7020, 7021 and 7024.

4. Order No. 20 will become final on or after April 24, 1992 provided Drexel files with the Court a definitive list of all Controlled Entities.

At the confirmation hearing before the Bankruptcy Court on March 5, 1992, the Debtors have presented their Second Amended and Restated Joint Plan of Reorganization and it is that Second Plan which has received the Bankruptcy

Court's approval. The preamble to Order No. 20 recites the First Plan as the basis for its issuance. 5/

5. Richard A. Bergman, Robert Davidow, Frederick McCarthy, BCI Equity Associates, L.P., BCI Capital Partners, a California L.P., BCI Capital Partners, L.P., BCI Capital Partners II, L.P., Macpherson Investment Partners, Macpherson Management Associates, Michael Milken, and possibly others, are scheduled to be beneficiaries of the release and injunction provision of Order No. 20. Drexel, Macpherson and Milken, as well as partnerships associated with or controlled by them, are scheduled to be deposed in a pending case in this Court, Forstmann Leff Associates et al. v. American Brands, Inc. et al., No. 88 Civ. 4485 JMC, (the "Forstmann" case).

1/ Claimant's application for the certification of this order pursuant to 28 U.S.C. 1292(b) was denied by the Order of this Court on September 16, 1991. Accordingly, no interlocutory appeal was taken.

2/ Prior to Marino, objectors seeking appellate review of a settlement were not required to intervene for that purpose, see e.g. Weinberger v. Kendrick, 698 F. 2d 61, cert. denied, 464 U.S. 818 (1983).

3/ See proposed complaint in intervention.

4/ This Court's decision of August 20, 1991 has specifically determined that this claimant had properly objected to the settlement per se and had standing to do so, see Finding No. 50.

5/ The difference between the First and the Second Plans has been outlined in a ten-page, single-spaced "Technical Amendments Agreement" submittted to the Bankruptcy Court under cover of the affidavit of Richard J. Wright, sworn to on March 4, 1992.

Evidence with respect to the findings and determinations of the Forstmann Court has been submitted as Exhibits 'M' and 'Q' to this claimant's notice of objections to the Joint Motion.

6. The Forstmann case was filed in this Court in June, 1988 by Weil Gotshal and Manges on behalf of some twenty-six "sophisticated" plaintiffs who, on Drexel's and Milken's advice. had bought some $781,000,000 worth of E-II "junk" bonds based on E-II's prospectus of July 2, 1987. Drexel was the sole underwriter named on that prospectus. Also on Drexel and Milken's advice these plaintiffs have not sold their bonds into American Brands, Inc.'s tender offer of January 25, 1988. Weil Gotshal has not named Drexel and Milken as defendants in the Forstmann case and has not asserted any claims under Section 11 of the Securities Act of 1933. In June, 1988 the one-year statute of limitations with respect to a cause of action under Section 11 had not expired.

On March 1, 1991, the E-II bonds

went into default and are now worthless.

7. On October 29, 1990, Weil Gotshal has filed the instant action in this Court, and a motion pursuant to 28 U.S.C. 157(d) to withdraw the reference from the bankruptcy Court "of federal securities and RICO claims and related proceedings", Exhibit 'N'. No disclosure was then made of the pending Forstmann case and of Weil Gotshal's interest in it. No proofs of claim were filed by Weil Gotshal on behalf of the Forstmann plaintiffs. Tne time to file such proofs has expired on November 15, 1990.

8. The affidavit of Richard J. Davis in support of the Joint Motion did not disclose Weil Gotshal's interest in protecting Drexel, Milken, Macpherson, the BCI partnerships and the individual managing partners (Bergman, Davidow and McCarthy) from being held liable to the

Forstmann plaintiffs. As a result, the stockholders of American Brands, Inc. may end up with a $781,000,000 judgment against their equity, for failure of the Forstmann plaintiffs (a) to join indispensable parties, (b) to file proofs of claim in this proceeding and (c) to timely assert Section 11 claims.

The release and injunction provisions of Order No. 20 would accomplish this result. For this reason, Order No. 20 in its final form should be appealed by those who are going to be adversely affected and aggrieved by it.

9. Order No. 20 grants "in all respects" the relief sought by the Joint Motion. This includes the injunction sought

> against any Holder of a Claim or Equity Interest, among other Persons, from the commencement or continuation of any suit, action or proceeding * * * against or

> affecting any Identified Settling Parties, including the Persons listed on Schedules A and B below
> * * *

This is contrary to Bankruptcy Rule 7065(d) which in terms prohibits the issuance of an injunction by reference to another document and without notice to those enjoined. Order No. 20 recites that "the Court (has) determined that no other notice of the entry of this Order need be given". (p.4). Whether or not this procedure complies with Rule 7065(d) is an issue that should be resolved on appeal from the Global Settlement, i.e. the final decision to be entered herein as soon as the Debtors shall have filed with the Court the list of all Controlled Entities, i.e. all Settling Participants who have executed and delivered definitive Global Settlement

documentation to the Pool Administrators.

10. The Order of August 20, 1991 approving the Settlement, the mandatory non-opt-out classes and the SEC Amended Plan of Distribution of the Disgorgement (Drexel) Fund has not yet been reviewed by the appellate Court on the appeals now pending. This claimant has filed objections to the entry of that order which objections could be reviewed by an appellate Court on appeal from a final decision. 28 U.S.C. 1291. This is an additional reason why intervention should be granted.

A proposed complaint in intervention and a memorandum of points and authorities are submitted herewith.

Respectfully submitted :

New York, N.Y. William Leighton
March 25, 1992 Claimant and Objector

cc : Thomas D. Barr, Esq.
Barry R. Goldsmith, Esq.
Melvyn I. Weiss, Esq.
David Berger, Esq.
Ira M. Millstein, Esq.
Stanley Nemser, Esq.

ENDORSEMENT

Motion to intervene is in all respects denied. So ordered.

4/16/92 Milton Pollack, Senior U.S.D.J.

FILED March 10, 1992
U.S. District Court, S.D.N.Y.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In re

THE DREXEL BURNHAM LAMBERT GROUP, INC.

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90 Civ. 6954 (MP)

Chapter 11 Case No. 90 B 10421 (FGC)

Jointly Administered

ORDER No. 20

ORDER APPROVING SETTLEMENT AND DESIGNATING IDENTIFIED SETTLING PARTIES PURSUANT TO THE JOINT PLAN OF REORGANIZATION

The above-named Debtors and the Federal Deposit Insurance corporation, the Resolution Trust Corporation and Milberg Weiss Bershad Specthrie and Lerach (collectively, the "Pool Administrators"), having jointly moved this Court by oral motion made in open Court ("Joint Motion") on February 14, 1991, (sic) for the entry of an order setting a hearing date to consider the (a) approval of compromises and settlements described to the Court as part of the Joint Motion, as fair and reasonable, pursuant to rule 9019 of the Federal Rules of Bankruptcy Procedure and other applicable statutes and

governing law, and (b) designation of certain persons and entities as "Identified Settling Parties" as that term is utilized and defined in the First amended and Restated Joint Plan of Reorganization for the Debtors under Chapter 11 of the United States Bankruptcy Code, dated and filed with the United States Bankruptcy Court for the Southern District of New York on December 20, 1991 ("the Plan")[1/]; and the Court having considered the Joint Motion and the preliminary views of the moving parties, counsel for Michael Milken, counsel representing other Persons that are parties to the settlement and representatives of

---

1/ Unless otherwise defined, all capitalized terms used in this order shall have the same meanings herein that they have in the Plan.

the United States Securities and Exchange Commission, with respect to the distribution of the disgorgement Fund established in SEC v. Milken; and the Court being familiar with the Plan, the proposed settlement, the compromises and settlements reflected in the Claims Agreement, and other relevant factors affecting these Chapter 11 cases; and the Court having determined, for good cause shown, that a hearing should be held to consider the Joint Motion and the settlement described in the Joint Motion and in that certain "Notice of Hearing Pursuant to Sections 12.2 and 12.3 of the Joint Plan of Reorganization to Consider Motion to Approve Settlement and Designate Identified Settling Parties" annexed as Exhibit 1 (the "Notice") to the prior order of this Court entitled "Order Fixing Hearing

Date on Joint Motion to Approve Settlement and Designate Identified Settling Parties dated February 14, 1992 (the "February 14 Order"); and a hearing on the Joint Motion having been convened before the undersigned on the 9th day of March, 1992, at 2:00 p.m. (the "Hearing"); and it appearing that notice of the Hearing has been duly and timely given to all Persons who have filed proofs of claim against the above-named Debtors or who have been scheduled as creditors of the above-named Debtors, and all Persons who are Equity Interest holders in the above-named Debtors, in accordance with the February 14 Order; and it further appearing that a copy of the Notice was served upon each Person that has filed a notice of appearance or request for service of papers in these Chapter 11 Cases in accordance with

Rule 2002 of the Federal Rules of Bankruptcy Procedure in accordance with the February 14 Order; and the terms and conditions of the compromises and settlements (collectively, the "Global Settlement") of the Debtors' claims against those Persons listed in Exhibit A to this Order (the "Settling Participants") having been filed with the Court; and the Court having reviewed and considered all objections to the Joint Motion that were duly and timely filed with the Court and served on the parties in interest in accordance with the terms of the February 14 Order; and the Court having considered the affidavit of Richard J. Davis, Esq., duly sworn to on the 9th day of March, 1992 ("Davis Aff."), and the Memorandum of Law in support of the Settlement and Designation of Identified Settling

Parties and in Opposition to objections that have been filed; and the Court having considered the statements of all counsel in the record of the Hearing in support and in opposition to the proposed Global Settlement and designations as Identified Settling Parties; and the Court having determined that no other notice of the entry of this Order need be given; it is

NOW, upon the Joint Motion, the record of all proceedings had herein in connection with the Joint Motion and in the above-captioned Chapter 11 cases, the Court hereby FINDS, DETERMINES, ORDERS, ADJUDGES AND DECREES as follows:

1. the Global Settlement of the Drexel Debtors' claims against the Settling Participants is fair and reasonable, and is in the best interests of the Debtors' estates, creditors and

and shareholders.

2. The Global Settlement falls within the range of reasonableness. In re Teltronics Serv., Inc., 762 F.2d 185, 189 (2d Cir., 1985); In re W.T. Grant Co., 699 F.2d 599, 608 (2d Cir.), cert. denied, 464 U.S. 822 (1983).

3. The Court has considered, among other things, the probability of success in litigation of the Drexel Debtors' claims against the Settling Participants in comparison to the benefits offered by the Global Settlement, the fact that the Settling Participants have rigorously denied all liability, the critical role that various providers of Directors and Officers Liability Insurance are playing in making the Global Settlement possible, the prospect of complex and protracted litigation if the Global Settlement is not approved, the degree

to which the settlement is supported by the parties in interest, the competency and experience of counsel who support the settlement, and the relative benefits to be received by the Debtors' estates and their creditors. (Davis Aff.), Drexel v. Loomis, 35 F. 2d 800, 804 (8th Cir., 1929).

4. The Settling Participants' contributions to Global Settlement provide material benefits to the Debtors' estates and to the consummation of the Plan (Davis Aff., paras. 5, 6, 7, 11).

5. The Joint Motion be, and it hereby is granted in all respects.

6. The Global Settlement of the Drexel Debtors; claims against the Settling Participants be, and it hereby is, approved in all respects and the Pool administrators be, and they hereby

are, authorized and empowered to issue, execute and deliver such documents and instruments, and to take such other and further actions as may be necessary and appropriate to implement and effectuate all terms, provisions and conditions of the Global Settlement in accordance with its terms.

7. The Persons whose names are listed on Exhibit A to this Order (and entities controlled by such Persons and who are members of the Settling Participant Group under the Global Settlement, hereafter "Controlled Entities") are hereby designated as "Identified Settling Parties" as that term is defined and used in the Plan, and they are entitled to the benefits provided for pursuant to Sections 12.2 and 12.3 of the Plan; provided that such designation may be revoked by the Court

if any Settling Participant fails to execute and deliver definitive Global Settlement documentation therefor to the Pool Administrators on or before March 16, 1992 at 6:00 P.M. E.S.T. Before March 23, 1992, Drexel shall file with the Court a revised Exhibit A eliminating all Persons as to which such designation has been revoked. Before April 24, 1992, Drexel shall file with the Court the list of all Controlled Entities.

8. The Insurance Companies whose names are listed on Schedule B to this Order are hereby designated as "Identified Settling Parties" as that term is defined and used in the Plan, provided that such designation may be revoked by the court if definitive documentation of settlements of such companies is not filed with the court by

May 4, 1992.

9. The Court shall retain jurisdiction over all perties to the Global Settlement until all payments required to be made thereunder have been paid or the Global Settlement agreements have been terminated in accordance with their terms.

10. Neither confirmation of the Plan, entry of the Confirmation Order, nor approval of the Global Settlement, and any injunctions provided for thereby or hereby shall prohibit the Internal Revenue Service (the "IRS") from asserting claims for excise taxes under I.R.C. Sec. 4975 (and related additions to tax and interest, if any) against Michael R. Milken for the tax years 1984 through 1991; nor shall they be construed as prohibiting Michael R. Milken from asserting any defense

against such excise tax claims. Neither confirmation of the Plan, entry of the confirmation Order, nor approval of the Global Settlement, and any injunction provided for thereby or hereby shall prohibit the IRS from asserting any claims that it may have for individual income tax liabilities (including any tax treated as an income tax) against any Identified Settling Parties or any of the Identified Officers, directors and Other Parties, nor shall they be construed as prohibiting the Indemnified Officers, directors and Other Parties from asserting any defenses against such claims.

Dated : New York, New York

March 9, 1992

s/s Milton Pollack

Senior United States District Judge

Filed : March 23, 1992
U.S. District Court, S.D.N.Y.

(caption as on page 58a)

ORDER No. 23

Tne Debtors having filed with the Court a revised list of Identified Settling Parties as required by the Order of the Court dated March 9, 1992, such list being Revised Exhibit A to this Order, the Court hereby orders that the persons whose names are listed as Revised Exhibit A to this Order (and entities controlled by such Persons and who are members of the Settling Participant Group under the Global Settlement) are hereby designated as the Identified Settling Parties as determined by the Order of the Court dated March 9, 1992.

Dated : New York, New York
March 23, 1992

/s/Milton Pollack
Senior United States District Judge

FILED: April 3,1992, DUPLICATE ORIGINAL

U.S. DISTRICT COURT, S.D.N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL DEPOSIT INSURANCE CORP.

Plaintiff,

- against -

MICHAEL R. MILKEN, et al.

Defendants.

91 Civ. 0433 (MP)

DREXEL BURNHAM LAMBERT, Inc. et al.

Plaintiffs,

- against -

MICHAEL R. MILKEN, et al.

Defendants.

91 Civ. 6108 (MP)

In re THE DREXEL BURNHAM LAMBERT GROUP, Inc. et al.

Debtors.

90 Civ. 6954 (MP)

ORDER No. 24

IT IS ORDERED THAT :

The individuals named below are to be given an opportunity in camera to review Confidential Settlement Information on two subjects:

1. The names of the contributors to the Settlement and the amounts thereof.
2. Summary information of the approximate net worth of each of the individual parties-defendants named by the FDIC/RTC in the above pending lawsuits in response to the form established by the Court.
3. The conditions which govern such disclosure which the parties, including

the FDIC and the RTC, have accepted and agreed to are as follows :

a. The date for the disclosure shall be not later than April 13, 1992, subject to extension to meet the actual scheduling requirements of the Court's Monitor and the reviewers of the disclosed information.

b. The persons who may review the Confidential Settlement Information shall be strictly limited to the Chief Executive Officer of the RTC, the chairman of the FDIC (or said chairman's designated employee), Thomas D. Barr, as attorney, Melvyn I. Weiss, as attorney, the Monitor provided for in the Settlement Stipulation (collectively, the "Reviewers"), and this Court. Each of the Reviewers shall execute under oath and deliver to this Court and counsel for the Settling

Individuals an undertaking in the form annexed hereto prior to reviewing the Confidential Settlement Information.

4. The disclosure is being made for settlement purposes only and is deemed an invasion of the right of privacy, and is acceded to in furtherance of the Settlement only. The conditions for such review shall be that:

a. None of the Reviewers shall make any notes or any other writing or recording containing, embodying, reflecting, summarizing or describing in any way, any of the Confidential Settlement Information during their review or at any time thereafter;

b. The Reviewers shall not discuss, disclose, reveal, describe or otherwise disseminate or communicate in

any way or at any time, other than at the reviewing session provided for in Annex H of the Settlement Stipulation, any of the Confidential Settlement Information to any person or entity, including, without limitation, to any employees, officers, directors, attorneys, or other persons in the Reviewers' own firms, agencies or organizations.

5. Any proceeding before this Court regarding the Confidential Settlement Information shall be in camera and any transcript thereof shall be sealed; and in any such proceeding, the obligations of this Order shall otherwise apply with respect to all information or material discussed or disclosed at such proceeding.

6. The obligations provided for in this Order shall survive the

termination of any or all of the above captioned matters, by settlement or otherwise, and this Court shall retain jurisdiction for purposes of enforcing this Order. Any violation of this Order shall be punishable by contempt, in addition to other available remedies, including consideration of the dismissal of the FDIC/RTC claims herein.

Dated : New York, New York
April 3, 1992

/s/ Milton Pollack
Senior U.S. District Judge

Endorsement :

This order was originally drafted dated March 7, 1992 before filing and to conform the actual filing date was redated April 3, 1992 without any other change. /s/ Judge Milton Pollack

FILED: April 29, 1992
U.S. District Court, S.D.N.Y.

(caption as on page 58a)

ORDER No. 31

The Debtors having filed with the Court a final list of Identified Settling Parties as required by the Order of the Court dated March 9, 1992, such list being Final Exhibit A to this Order, the Court hereby orders that the Persons whose names are listed on Final Exhibit A to this Order are the Identified Settling Parties designated by the Order of the Court dated March 9, 1992 and entitled to the benefits of the release and injunction described in Sections 12.2 and 12.3 of the Second Amended and Restated Joint Plan of Reorganization for the Debtors under Chapter 11 of the United States Bankruptcy Code.

Dated : New York, New York

April 24, 1992

/s/ Milton Pollack
Senior United States District Judge
4/29/92

Exhibit A

Abbott, Roy	Beck, Jeffrey P.
Abecassis, Paul	Bencivenga, Joseph
Ackerman, Jack	Bergman, Richard A.
Ackerman, Peter	Bergmann, David W.
Adams, Joseph P.	Berman, Martin L.
Anreder, Steven	Beyer, Robert D.
Asen, Joel	Biddleman, Paul
Astrachan, Andrew	Bilger, Arthur H.
Attanasso, Mark	Black, Leon
Austen, Eileen	Bloom, Jay
Bachelor, Herbert	Borden, Frederick
Bailowitz, Stanley	Boudakian, Thomas
Balash, Jeffrey	Brodsky, Gerald
Balser, Donald	Bron, William
Bathon, Dan	Brown, Bruce

Brown, Michael D.	Brumberger, E. Alan
Budish, Jon E.	Cameron, Dort A.,III
Cates Gordon,Nancy	Cauchois, Thomas
Cavalier, John	Chanin, Jeffrey
Chasin, Mark	Chu, Franklin
Chulick, John	Clerkin, Thomas P.
Cogut, Craig M.	Connors, Thomas
Crowell, Richard	D'Ambrosio, Lorraine
Dahl, James	Dargan, Charles
Davidow, Robert	Davidson, Marshall
Delany,Logan D.,Jr.	DeRemer, Carl
Dolan, Dennis	Dumler, Richard
Edersheim, Maurits	Engel, Donald
Evensen, Chris	Fallon, Robert
Faux, Geoffrey L.	Feinman, David
Finerman, Ralph	Fishbein, Alan J.
Fischer, Steven	Flanagan, Patrick
Flans, Allen	Frary, Richard S.
Friedman, Joshua	Frymer, William
Galgano, Dennis M.	Gardiner, Peter R.
Garver, Bruce	Gelfond, Richard L.

Gellert,Michael E.	Gold, Joel L.
Goodman, Mark	Goodwin, Robert
Gorman, Kevin J.	Green, Jeffrey
Hannan, John J.	Harch, Joseph
Harman, Reed L.	Hedley, David
Heyer, Andrew	Heyke, John
Higbee, Paul	Hochman, Richard H.
Horowitz, Harry	Humphreville, John
Humphreville,Susan	Jetter, Paul
Johnson, Roy J	Jones, Lisa
Jospe, Roger	Julis, Mitchell R.
Kantor, Edwin	Kay, David
Kehler, Dean	Kendall, Donald
Kiarsis, David	Kissick, John
Klein, Barry F.	Kline, Robert
Knox, Lynne	Koenig, Gerald
Koerner, Gerald	Kohl, Robert L.
Krasznekewicz,John	Ladyzinski, John A.
Lagumen, Graciela	Lamport, Anthony
Lane, Jeffrey	Langer, Jack
Levy, Paul	Lewis, Trevor

Lloyd, Robert	Loden, Bridgette S.
Madigan, Kevin J.	Mael, Joel
Maggard, J.O.	Malanoski, Mary Lou
Mass, Alison J.	Maultasch, Cary J.
McCarthy, Frederick	McClure, Douglas
McMahon, John	Meade, Leonard
Milken, Lori	Milken, Lowell
Milken, Michael	Milken, Sandra
Mills, David	Moelis, Kenneth
Monzert, Pamela	Moriarty, John
Moseley, Frederick	Moss, Philip W.
Mullen, Donald	Nadler, Allen
Neuman, Jeffrey L.	Nevins, Richard
Newberg, Bruce	Noonan, Mark
Noonan, Thomas	Peizer, Terren S.
Phillips, Arthur	Post, Lawrence A.
Price, James D.	Purkey, Harold
Raben, Bruce	Radecki, Joseph J.
Rapaport, Marc	Ravich, Jess M.
Rawlings, James L.	Reed, Langhorne, IV
Reinhart,Thomas R.	Ressler, Anthony

Ridings, Barry W.	Rock, Randy
Rosee, Richard	Rosenfeld, Naomi
Rosenthal, Alan E.	Roth, Stephen
Rotschild, Peter	Sandler, Richard V.
Savin, Patrick	Schefler, Sylvan
Schiffner,James	Schlumberger, Nicholas
Schneider, James A.	Shultz, Kevin W.
Shapiro, Janice L.	Shields, Allyson
Shohet, Ruben	Sokoloff,Jonathan D.
Sorte, John	Spurge, Lorraine
Stedman, Linda	Stein, Stanley
Stern, Lee	Sullivan, James G.
Sydorick, David	Taylor, Cathryn
Taylor, John	Thurnher, Charles A.
Tobey, William R.,Jr.	Trepp, Warren
Trotman, Stanley	Utay, Marc A.
Van Utt, Patsy	Varughese, George
Victor, Edward G.	Virtue, James E.
Wagner, Leon	Wehrwein, Sven
Weinhuff,Jeffrey E.	Weinroth,Stephen D.

Wilf, Henry M.	Willson, Alexa D.
Winnick, Gary	Winningham, Stephen
Ying, David	Yurcak, Ronald N.
Dupont, David	Douglas, Scott
Eng, William	Handler, Richard
Harrison, Scott	Jablonow, Jay
Jetmore, Jon	Lehrman, Douglas
Welker, John	Bucci, Gerard M.
Michael Fields	Kantor, Steven
Moglia, James	Ranger, Michael
Rapisarda, Paul	Thomas, Marla
Trouveroy, Olivier	Graham, Patrick L.

There follow approximately 600 entities (partnerships, corporations) created by the above named individuals and others.

Filed : August 20, 1991
U.S. District Court, S.D.N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re

THE DREXEL BURNHAM LAMBERT GROUP, Inc. et al.

Debtors.

90 Civ. 6954 (MP)

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

against

DREXEL BURNHAM LAMBERT INCORPORATED, THE DREXEL BURNHAM LAMBERT GROUP, INCORPORATED et al.

Defendants.

88 Civ. 6209 (MP)

DECISION

CONSOLIDATED FINDINGS OF FACT

AND CONCLUSIONS OF LAW

* * *

POLLACK, Senior District Judge

CONRAD, Bankruptcy Judge.

FINDINGS OF FACT

I.

1. By Order dated May 10, 1991, this Court certified temporarily, and for settlement purposes only, a mandatory non-opt-out class of all securities litigation claimants (the "Mandatory Class") and two mandatory, non-optout subclasses (the "Mandatory Subclasses") pursuant to Bankruptcy Rules 7023 and 9019 and Rules 23(a) and (b)(1)(B) of the Federal Rules of Civil Procedure.

2. The Court also preliminarily approved the terms of the compromise

and settlement embodied in the Securities Litigation Claims Settlement Agreement dated May 3, 1991 (the "Settlement") for purposes of scheduling a hearing thereon and to direct notice to be sent to the Class Members.

3. Notice of the August 9, 1991 hearing on the fairness, reasonableness and adequacy of the Settlement was mailed to more than 161,000 members of the Class and Subclasses.. In addition, summary notice was published on two separate occasions in each of six different newspapers (The Wall Street Journal, New York times, Los Angeles Times, the Financial Times, The Chicago Tribune and The International Herald Tribune) throughout the United States.

4. In a Memorandum filed herein, dated August 9, 1991, the Court made brief basic findings of fact and rulings

and the same are hereby incorporated herein, and for convenience restated as follows :

due deliberation having been had on all of the foregoing, it is ordered that :

1. A sufficient evidentiary basis has been established herein for each of the following :

A) All the requirements of the Federal Rules of Civil Procedure 23(a) and 23(b)(1)(B) have been satisfied for certification of the mandatory non-opt-out class and subclasses A and B of all securities litigation claimants who timely filed proofs of claim in the chapter 11 cases of the Debtors;

B) The settlement that has been proposed is fair, reasonable, and adequate, in actual compliance with

Federal Rule of Civil Procedure 23(e);

C) The amended plan of distribution of the civil disgorgement fund is fair, reasonable and adequate.

D) The objections to the formation and appropriateness of the mandatory classes and their incidents lack merit, and the request of the creditors Liggett Group and Liquid Green Trust to opt out are denied in the Court's discretion;

E) The objections to the settlement are unsupported in fact and lack merit in the face of the totality of the compromise established.

In more detail the following are the supplemental and additional Findings of Fact herein.

II.

5. In 1988, the SEC filed the action entitled SEC v. Drexel Burnham Lambert Inc., et al., 88 Civ. 6209 (MP) (S.D.N.Y., 1988) (the "SEC Action") against, among others, Drexel Burnham Lambert Incorporated ("Inc."), The Drexel Burnham Lambert Group, Inc. ("Group") and Michael Milken ("Milken") who had been the head of Inc.'s High Yield and Convertible Bond department ("HYBD"). The SEC Action was presided over by this Court.

6. Group and Inc. settled the SEC Action and agreed to pay a total of $350 million to be deposited into a civil disgorgement fund established to satisfy eligible civil litigants who had

federal securities claims against Drexel arising out of the activities of the HYBD, occurring between January 1, 1978 and January 24, 1989 (the "Drexel Fund"). Of that amount, $200 million was paid pre-petition, and the Settlement provides for the $150 million balance to be paid upon consummation of the Plan.

7. Milken later settled the SEC Action by paying a total of $400 million to a disgorgement fund established for the benefit, to the extent thereof, of civil claimants for compensatory damages against him (the "Milken Fund"). Said Milken fund is subject to an amended Plan adopted by the SEC and approved by the Court as fair, reasonable and adequate for distribution of the disgorgement fund benefits including percentage allowance between certain

Subclasses of the Mandatory Classes referred to hereinafter.

III.

8. On February 13, 1990, Group filed with the Bankruptcy Court for the Southern District of New York a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

9. Subsequently, Inc. and 18 of Group's other subsidiaries (collectively, the "Debtors"), many of which had trading capabilities in domestic and international securities, income, equity and interest-rate products, commodities and currencies, either filed a petition for relief or were the subject of an order for relief under Chapter 11.

10. By order of the Bankruptcy Court dated June 20, 1990, the Debtors'

Chapter 11 cases were consolidated for procedural purposes only pursuant to bankruptcy Rule 1015(b). They curently continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

11. On June 29, 1990, the book value of the assets of Group and its subsidiaries on a consolidated basis was $3.27 billion. This amount declined to $2.54 billion by December 28, 1990 and was about $2.391 billion as of June 28, 1991.

12. The amount of liabilities reflected on the consolidated balance sheet of Group and its subsidiaries declined from $2.69 billion on June 28, 1990 to $2.502 billion on June 28, 1991. However, these figures do not reflect off-balance sheet liabilities such as

contingent and disputed claims against Debtors.

13. As of May 29, 1990 (the date Inc. filed its Chapter 11 petition), The disputed contingent litigations entailed approximately 400 pending cases in federal and state courts and in various arbitration fora which named one or more of the Debtors as defendants or respondents (the "Pending Actions"). One group of cases in the Pending Actions - the Ivan Boesky Litigation also known as MDL 732 - has been presided over by this Court since 1987.

14. By order dated July 23, 1990, the Bankruptcy Court set November 15, 1990 as the deadline for filing proofs of claim and proofs of interest against the Debtors' estates (the "Bar Date"), except for certain claims against the estates, including those of the Internal

Revenue Service (the "IRS"). February 13, 1991 was fixed as the deadline for the IRS to file its proof of claim against the Debtors' estates.

15. Over 15,000 claims were filed against Debtors by the Bar Date including the claims of those who had initiated Pending Actions. The aggregate face value of those claims which set forth a claimed amount of damages exceeds $200 billion. Additionally, approximately 6,500 claims fail to set forth any amount of claimed damages. After eliminating duplicative, multiple, late and other defective claims subject to expungement under the Bankruptcy Code, claims with an aggregate face value between $29 billion and $30 billion remain. As such, the claims asserted against the Debtors are more than ten times greater than the

current assets of the Debtors' estates.

16. Out of the 400 Pending Actions extant at the time of Inc.'s filing, about 110 were pre-petition court actions pending against one or more of the Debtors which were based upon federal and state securities laws, the RICO statutes, or the antitrust laws (the "Pending Securities Actions").

17. These Pending Securities Actions and later filed similarly-based securities law claims (non-duplicative) accounted for approximately 850 of the claims filed against the Debtors by the Bar Date. These claims aggregate well in excess of $20 billion (including claims not having a clear face value). These claims, including the Pending Securities Actions, became known in the Debtors' bankruptcy cases and in the Settlement as the "Securities Litigation

Claims."

18. The grossly disproportionate ratio of liabilities to assets faced a limited and continually dwindling fund from which Debtors could pay only a fraction of the successful claims asserted against them.

19. During the Summer of 1990, before the Bar Date and even before they all filed their actual claims against the Debtors, a group of securities Litigation Claimants sought official committee status from the United States Trustee on the ground that they represented important Drexel contingent creditors all of whom showed enough common ground to be representative of other Securities Litigation Claimants. While such status was denied them, Debtors negotiated a Bankruptcy Court-approved stipulation with this group,

who named themselves the Securities Litigation Claimants Group ("SLCG"), pursuant to which Debtors agreed, inter alia, to treat SLCG as parties-in-interest and negotiate with them in good faith on various matters, including the terms of any reorganization plan affecting such claims.

20. The original members of SLCG were : the S.E.C.; Cravath, Swain & Moore, counsel for the FDIC/RTC; Milberg Weiss Bershad Specthrie & Lerach ("Milberg Weiss"), who were lead and co-lead counsel in numerous class and derivative actions against Drexel; Berger & Montague, P.C. and Wolf Popper Ross Wolf & Jones, who were lead/liaison counsel for class plaintiffs in MDL 732 (the securities actions arising out of the SEC actions against Boesky, Levine, Milken and Drexel), and several other

individual claimants. The charter which created SLCG, as sets forth in a Bankruptcy Court ordered stipulation, specifically stated that these claimants organized themselves into SLCG "in order to advance interests of common concern."

21. Later on, other claimants, including an objector to the Settlement, Liggett Group, and another claimant with similar claims based on the purpose of Integrated Resources commercial paper, joined SLCG.

22. Prior to the Bar Date, Debtors attempted, but failed, to settle the pending Actions on an individual basis, because of the sheer number, complexity and the amount of the Securities Litigation Claims being filed against Debtors.

23. In an effort to free the settlement process or to remove through

litigation the blocking effect of these huge Securities Litigation Claims, Debtors moved on October 26, 1990, for the withdrawal of the reference of jurisdiction from the Bankruptcy Court for the purpose of estimating and capping all the Securities Litigations Claims (the "Withdrawal Motion").

24. At a status conference held shortly after the Debtors filed the Withdrawal Motion, this Court directed the Debtors and members of SLCG to engage in a joint effort to find common ground for a format in which to estimate the Securities Litigation Claims.

25. On November 27, 1990, the return date of Debtors' Withdrawal Motion, the interested parties appeared before this Court to argue the respective merits of estimation under section 502(c) of the Bankruptcy Code.

26. The Court indicated that it disagreed with those who wished to estimate all Securities Litigation Claims, calling it an exercise in futility if Debtors' liquidation was the likely result, and rejected the notion that over 100 separate estimations and settlements of matters of this size and complexity could be concluded in this century (and this applied them only to the Pending Securities Actions, not to the further Securities Litigation claims filed prior to the Bar Date). the Court adjourned the hearing until February 18, 1991 with instructions to representatives of the Debtors, the Official Committees of Creditor and Equity stockholders and four specific representatives of the Securities Litigation claimants to explore the possibility of reaching a global

settlement on the basis of a consensual estimation so as to reduce the amount of the Securities Litigation Claims.[1/]

27. Following the November 27, 1990 hearing, with the encouragement and supervision of the Court, counsel for the Fixed creditors, the representatives of the Securities Litigation Claimants and the Debtors in earnest began a series of arduous, arm's-length negotiations focusing on global settlement of the Securities Litigation Claims through consensual estimation.

28. Over the course of numerous sessions, involving scores of experienced counsel for all the negotiating parties, specializing in litigation, bankruptcy, corporate and tax matters, efforts were made to finalize the terms of the proposed settlement.

29. Notwithstanding their efforts at settlement, the negotiating parties continued to press their positions through motion practice in both the Bankruptcy Court and this Court, including another motion by the Debtors to expedite estimation of the FDIC/RTC claims.

30. The February 18, 1991 hearing on the adjourned return date on Debtors' motions to withdraw the reference was presided over by both the District and Bankruptcy Courts. Although the negotiating representatives reported at that hearing that they had agreed on a broad outline of a global settlement proposal and had initialed a "Heads of Agreement" this Court stated that unless the Securities Litigation claimants soon reached a binding estimation of the value of their claims

by written agreement, the case would be converted into a Chapter 7 case pursuant to section 1112(b) of the Bankruptcy Code. 2/

31. During the February 18 hearing, Dennis J. O'Brien, appearing as counsel for the Liggett Group, Liquid Green and USX Corporation, indicated that he had not been involved in the prior negotiations. The Court commented, "it would have been impossible to have reached the desirable point with any more conferees than we have had." Mr. O'Brien responded, "that's why we didn't speak before now, Your Honor." 3/

1/ Nov. 27, 1990 Transcript at 4, 12, 14-15.

2/ Feb. 18, 1991 Transcript at 6-8.

32. At the conclusion of the February 18 hearing, the Debtors were directed to prepare an order to show cause, returnable on April 4, 1991, why the Chapter 11 cases should not be converted to Chapter 7 cases. All interested parties were notified.

33. By order dated February 19, 1991, the court withdrew the reference as to all of the Debtors' Chapter 11 cases, retained jurisdiction of the Securities Litigation claims and other non-core, non-related matters and re-referred all core matters to the Bankruptcy Court.

34. On February 19, 1991, the negotiating representatives reduced to writing and executed a "Securities Litigation Agreement in Principle" which incorporated the broad outlines of the settlement in principle that had been

reported to this Court on February 18. From that point until the conversion hearing before this Court on April 4, 1991, the representatives of the negotiating parties met in further around-the-clock, daily sessions together and in small groups in arm's length negotiations on the details of the terms of Settlement to be incorporated in the Agreement.

35. On April 4, 1991, multitudes of interested parties and their counsel appeared at the hearing on conversion of this case to a Chapter 7 liquidation.

36. The Court received evidence at the April 4 hearing on the financial condition of the debtors and took evidence in the form of affidavits, certifications and other documentation on the effect a Chapter 7 liquidation would have on the Debtors' assets and

the Debtors' ability to adequately satisfy the claims of its creditors.

37. The evidence indicated that nearly half of Debtors' estates consisted of illiquid and/or difficult to value assets such as high yield securities, partnership and real estate interests and leveraged buy out properties and leveraged leases, all of which potential multiple trustees in a Chapter 7 liquidation would be under a duty to dispose of in a prompt manner, without regard to maximization of the value of these assets and with the risk that distress sale values would result.

38. This Court also heard from all persons who wished to be heard on conversion to Chapter 7 or on any other issue. Counsel for all of the negotiating parties presented their views on the progress of The Settlement

and on the confirmability of the joint plan of reorganization (the "Plan") that they were negotiating. The representatives of the Securities Litigation Claimants also made clear that The Settlement was being negotiated on a mandatory class action basis.[4/]

39. All persons and entities represented at the hearing were afforded an opportunity to be heard and to contribute pro or con to the issues before the Court.

40. Mr. O'Brien appearing on behalf of The Liggett Group, Liquid Green and U.S.X. Corp. asserted that although his clients were members of SLCG, he had not sat in the negotiations, that he still preferred conversion into Chapter 7. The Liggett Group and Liquid Green, had purchased $13 million of the commercial papers of

Integrated Resources through Drexel, they have filed a joint objection to The Settlement. U.S.X. Corp. has not objected to The Settlement and neither have other purchasers through Drexel of approximately $100 million of such commercial paper.

41. In December 1990, Debtors successfully moved the Bankruptcy Court under Bankruptcy Rule 2004 for an order compelling the Securities Litigation Claimants to respond to a nine-point questionnaire concerning their claims. [5/] This questionnaire was mailed starting on December 26, 1990 to over 900 such claimants. Responses were received from 615 of them, including six responses from objector Liggett Group and responses from other objectors such as Hart Holdings Co./Reeves Industries Inc.

42. The questionnaire responses provided significant insight to the bases, amount and types of securities claims filed against the Debtors. Copies of the questionnaire responses were requested by, and provided to, the SLCG representatives during the course of settlement negotiations.

43. Pursuant to a motion made by the FDIC/RTC, the Bankruptcy Court ordered Debtors to produce to that Class representative and there were accordingly disclosed all non-privileged Bankr. Rule 2004 materials created over the course of 8 months of intensive discovery initiated by the Official Committees of Creditors and Equity shareholders.

3/ Feb. 18, 1991 Transcript at 20.

4/ Apr. 4, 1991 Transcript at 1-14, 24-37

5/ Dec 20, 1990 Transcript at 82-83.

44. Additionally, each of the Class negotiators had access to voluminous records, discovery and pleadings from related pre-petition actions against the Debtors and other third parties, and pre-petition actions brought against such third parties, and to the complete public record of these Chapter 11 cases.

45. Since the well-publiicized settlement discussions began almost nine months ago, no objector has moved the Court to obtain any discovery concerning The Settlement to support any objection made thereto.

46. Between April 4 and May 10, 1991, the representatives of the parties continued to negotiate and draft the terms of The Settlement and the proposed Plan. This process involved the negotiation of a highly sophisticated

transaction, implicating corporate, tax, bankruptcy, regulatory and litigation expertise and consequences. The outcome was The Settlement, dated May 3, 1991, and the attached Exhibits, which included the proposed Plan Term sheet. The Settlement is intricate; it has been derived from a process that involved direct and rigorous competition for a limited, dwindling fund of Debtors' assets between fixed Creditors, on the one hand, and Securities Litigation Claimants on the other.

47. The Settlement also created an opportunity for the Debtors to achieve a settlement with the IRS on July 26, 1991, whose facial $5.3 billion claim in and of itself vastly exceeded Debtors' assets. The IRS settlement appears (pending Bankruptcy Court approval) to be fair and reasonable and makes it

practical to project a plan of reorganization. The settlement and IRS settlement overcome two of the biggest stumbling blocks that Debtors believed they had to overcome to formulate a feasible Plan and that will now enable them to seek and obtain Bankruptcy Court approval of the Plan during the confirmation process.

48. On July 30 and 31, 1991, after an additional two months of arm's-length negotiations on those terms of the Plan that had not been finalized in the Plan Term Sheet, a working draft of the Plan (in almost final form) was furnished to the Courts for their information and distributed to all creditors on the Chapter 11 service list pursuant to Bankruptcy Rule 2002.

49. Only 14 alleged objections, in toto, were filed to The Settlement.

Of these, only 8 objections were filed by actual members of the Class, having standing to object.

50. The proponents of The Settlement and the SEC Disgorgement Distribution Plan at the hearing consisted of: (i) the Debtors, (ii) the four Official Committees appointed in these Chapter 11 cases, (iii) the four representatives of the Class, and (iv) the Securities and Exchange Commission (the "SEC"). Also appearing were 17 other persons and entities, including four who did not object, six who lacked standing to object as not being members of the Class, five Class members who did not object to The Settlement, per se, but to their relative status within The Settlement Class, and three Class members who objected to The Settlement per se. These latter objectors were

(a) joint objectors the Liggett Group and Liquid Green, (b) joint objectors Hart Holding Company and Reeves Industry, Inc.; and (c) William Leighton.

Objectors to their relative status within The Settlement Class included: (a) HongKongBank of London Ltd.; (b) Citibank, Den Danske and Lloyd's Bank, Plc, and Canadian Imperial Bank of Commerce who filed a joint objection; (c) PALCO; (d) Society Bank; and (e) certain plaintiffs in MDL 732 who sought inclusion of future judgment reduction and set-off features in The Settlement.

51. Those who did not object at the hearing included: (a) PLM International, Inc; (b) First Trust National Bank; (c) American International Group; and (d) Michael Milken (who lacked standing and withdrew

objection). Those who lacked standing to object at this time include: (a) Bank of Yugoslavia; (b) Messrs. Godring, Elkins, Fish, Rosenthal and Spiegel who filed a joint objection; (c) American Bankers Group; (d) twenty partnerships whose joint objection was filed by Sidley & Austin; and (e) Sylvan Shefler.

52. The Settlement permits the debtors to avoid liquidation under Chapter 7 and almost certainly saves the Debtors' assets for the Class from virtually total depletion that would be the result of Chapter 7 administrative expenses and a Chapter 7 distress sale.

53. The Mandatory Class, certified for settlement purposes only, consists of all Securities Litigation Claimants who filed timely proofs of claim in the Debtors' Chapter 11 cases and who are listed on Exhibit A or B thereof (or who

may be added to either list pursuant to The Settlement including claims listed on Exhibit C). The Mandatory Class includes:

a. the persons who are the named claimants on such proofs of claim;

b. all putative members of the respective classes or other persons or entities whom the named claimants on such proofs of claim purport to represent either as set forth on such proof of claim or in any of the class action Pending Securities Actions against Drexel referred to in the proofs of claim as listed on Exhibit A or B of The Settlement (including any claims which may be added to Exhibit A or B from Exhibit C); and

c. the corporations on whose behalf derivative Pending Securities Actions were brought against any of the Debtors

listed on Exhibit A or B (including any claims which may be added to Exhibit A or B from Exhibit C).

54. The Mandatory Subclasses, certified for settlement purposes only, are Subclass A and Subclass B. Subclass A consists of all Securities Litigation Claimants who filed timely proofs of claim in the Chapter 11 cases of the Debtors and who are listed on Exhibit A (or who may be added to Exhibit A pursuant to The Settlement, including claims listed on Exhibit C).

Subclass A includes:

a. the persons who are named claimants on such proofs of claim;

b. all putative members of the respective classes or other persons or entities whom the named claimants to such proofs of claim purport to represent either as set forth on the

proof of claim or in any of the class action Pending Securities Actions against Drexel referred to in the proofs of claim as listed on Exhibit A; and

c. the corporations on whose behalf derivative Pending Securities Actions were brought against any of the Debtors as listed on Exhibit A.

55. Subclass B consists of all securities litigation claimants who timely filed proofs of claim in the Chapter 11 cases of the Debtors and who are listed on Exhibit B (or who may be added to Exhibit B pursuant to The Settlement, including claims listed on Exhibit C). Subclass B includes :

a. the persons who are named claimants on such proofs of claim;

b. all putative members of the respective classes or other persons or entities whom the named claimants on

such proofs of claim purport to represent either as set forth on the proof of claim or in any of the class action Pending Securities Actions against Drexel referred to in the proofs of claim as listed on Exhibit B; and

c. the corporations on whose behalf derivative Pending Securities Actions were brought against any of the Debtors as listed on Exhibit B.

* * *

65. F.R.Civ.P. 23(b)(1)(B)

a. The prosecution of separate actions by or against individual members of the Mandatory class would create a risk of adjudications with respect to individual members of the Mandatory class which as a practical matter would be dispositive of the interests of the other members not parties to the adjudications or substantially impair or

impede their ability to protect their interests.

b. As shown in the certificate of Peter Gruenberger filed in support of the Application for Approval of the Securities Litigation claimants Settlement ("the Gruenberger Certificate"), and the affidavits of John F. Sorte, and Richard J. Wright annexed thereto, the assets of the Debtors' Estates constitute a limited fund which is dwindling and which is insufficient to satisfy all claims of the Class members:

(1) the assets of the Debtors' estates are currently valued at approximately $2.4 billion.

(2) Allowed liquidated unsecured claims against the estates currently amount to $2.5 billion.

(3) There are approximately

$29-$30 billion face amount of disputed claims against the Debtors' estates.

(4) the face amount of disputed claims filed on or on behalf of members of the class aggregate in excess of $20 billion.

(5) The limited fund available is insufficient to satisfy the claims of all members of the Mandatory class, whether the class claims are viewed as having priority over the liquidated claims, on par with such claims, or subordinate to subclasses.

66. For all the reasons set forth above with respect to the Mandatory Class, the prosecution of separate actions by individual members of the Ssubclasses would create a risk of adjudciation with respect to individual members of the Mandatory subclasses

which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

67. Weighing the best interests of the members of the Class and of the Subclasses and the values of The Settlement to said members, it would be inimical to those interests to grant any member leave to opt-out of the Classes and leave to opt-out is denied in the Court's judgment and discretion.

68. Notice:

Notice of the proposed Settlement of the Mandatory Class and subclasses as required pursuant to F.R.Civ.P. 23 and due process was sufficient, both as to form and content, to apprise interested parties of the pendency of the

Settlement on behalf of the Class and afford them an opportunity to present their objections.

69. By the Class Order, this Court preliminarily approved the terms of The Settlement embodied in the Agreement dated May 3, 1991, subject to a hearing upon notice to members of the Class.

70. The Court also certified temporarily, for settlement purposes only, the Mandatory class and the Mandatory Subclasses, pursuant to bankruptcy rules 7023 and 9019 and F.R.Civ.P. 23(a) and (b)(1)(B).

71. Pursuant to the Class Order, due and sufficient notice was given to the members of the Class and subclasses, by mail and by publication. The last date for objecting to The Settlement was July 24, 1991.

72. Although the value of the

Settlement in total dollars cannot presently be estimated with precision, there is sufficient evidence to demonstrate the values of the Debtors' estates in which the class will receive percentage interests. As shown in the Weiss, Nemser and Berger Affidavits in support of The Settlement, there is a reasonable prospect that the Debtors' estates could be valued at $1.8-$2 billion or more after deduction of certain fees and expenses. Based upon The Settlement, and assuming a valuation of the estates at $2 billion, the benefit to the class as a whole would be $810 million, with $607.5 million allocable to Subclass A (not including recoveries under the pooled claims) and $202.5 million allocable to Subclass B (not including certain other benefits attributable to that Subclass).

73. Based upon the findings set forth with respect to a determination that a limited fund exists, the Debtors' assets are sufficiently limited that they would not be able to withstand a greater judgment. The Settlement, with respect to the Class, is fair and reasonable and adequate.

74. The Settlement is likewise fair, reasonable and adequate with respect to both Subclasses A and B. In reaching this conclusion, the Court finds that the Settlement proceeds allocable to Subclass A constitute a fair, reasonable and adequate allocation. The portions allocable to Subclass B constitute a fair, reasonable and adequate allocation to Subclass B.

75. Under the terms of the Settlement and the SEC Plan, Subclass A members will receive 75% of the fixed

assets and eligible members of Subclass A will receive 75% of the Drexel Fund (after first setting aside an allocation reserve for certain claims filed after the Bar Date, with approval of the Court). Subclass B members will receive 25% of the fixed assets and eligible members of Subclass B will receive 25% of the Drexel Fund (after setting aside the allocation reserve). Eligible members of Subclass B will also receive any balance remaining in the allocation reserve established under the Drexel Fund. In addition to the foregoing, Subclass B members will receive $15 million, less expenses incurred by counsel in allocating the Settlement funds among Subclass B members. Subclass B members may also receive certain portions of the recoveries to be obtained by Subclass A

members in connection with the pooling arrangements.

76. The allocation between Subclasses A and B are fair, reasonable and adequate because:

a. The allocation to each Subclass bears a reasonable relationship to potential maximum recoveries against Drexel, and takes into account that Drexel would be only partially responsible for the alleged violations, and

b. The allocations were the result of extensive arm's-length negotiations among highly experienced counsel, who considered all relevant factors, including the following: (a) that Subclass A members were required to pool their claims with the Debtors' similar claims and to share recoveries thereunder, both inter se and with the

Fixed Creditors, (b) that the values of the claims asserted by subclass A members, including the individual, class and derivative claims and the claims of the FDIC and RTC, exceeded the monetary amounts in the claims asserted by Subclass B.

77. The Settlement is fair notwithstanding that the actual amounts to be distributed to class members will be subject to further allocation procedures within each of the Subclasses.

78. The allocation procedures will protect the interests of each of the Subclass members. Moreover, the procedures will govern distributions not only from the fixed assets, but also from the Drexel Fund and will be subject to further Court approval.

Thus adequate safeguards exist to provide that Subclass A and Subclass B members will be fairly and adequately compensated out of Drexel's assets.

79. The fact that some Subclass members are eligible to participate in the Drexel Fund, while others are not, does not affect the reasonableness of the Settlement or create a conflict among the Subclass members. The immediate funding of the Drexel fund and obtaining of benefits for Securities Litigation Claimants served the best interests of and satisfied claims of all the Class members. That a Class member would not participate in the Drexel Fund may be considered in determining such Class member's share of the fixed assets.

80. The Settlement is reasonable in light of the complexity, expense and

likely duration of the litigation. Litigation through estimation procedures and appeals would be wasteful, needlessly expensive and could substantially reduce the amounts available for Settlement. In addition, the risks inherent in conversion of these Chapter 11 cases to a liquidation pursuant to Chapter 7 further supports the reasonableness of the Settlement.

81. The Settlement is fair, reasonable and adequate in light of the risks involved in establishing liability, damages and in maintaining a class action through trial. The risks include:

a. the estimation and capping procedures contemplated herein might resolve Class members' claims against the Debtors at levels far below the amounts to which they believe they would

be entitled with no capping, and with full discovery and a plenary trial;

b. the fact that the full funding of the Drexel Fund was at risk by virtue of the claims of other creditors that such funding was improper;

c. the risk of a possible conversion of these bankruptcy cases to a Chapter 7 liquidation proceeding could adversely affect the eventual recoveries available for Securities Litigation claimants; and

d. imposition of the automatic stay and the extension of the stay to non-Debtor personnel have created potential risks in prosecuting the claims not only against the Debtors but also in ongoing actions against third parties.

82. The Court finds that risks are generally inherent in litigation, particularly in complex claims such as these.

83. The Settlement was negotiated with knowledge of the strengths and weaknesses of the litigations involved.

84. The affidavits of Weiss, Nemser and Berger and the certificate of Gruenberger, establish that the Representatives of the Mandatory Class had extensive negotiations with the Debtors and the Fixed Creditors over many months. Substantial financial information was provided to the said representatives with respect to the status of the Debtors' assets. In addition, extensive discovery has been ongoing, involving countless documents and numerous depositions in may of the contingent class and derivative actions. Counsel for the class have received access to essential discovery taken in connection with a Rule 2004 examination. Under the circumstances, the Class

representatives had sufficient information to assess whether the Settlement was fair, reasonable and adequate.

85. For all the reasons sets forth above with respect to the Mandatory class, the Settlement on behalf of the Subclasses was negotiated with knowledge of the strengths and weaknesses of the litigations involved.

86. The virtual absence of negative response to the Class members supports approval of the Settlement.

87. For the reasons set forth above with respect to the Mandatory Subclasses, the absence of any substantial negative response of the members of the Subclasses supports approval of the Settlement. No Subclass A members have objected on the basis that the Settlement is not fair,

reasonable and adequate. Only eight objections to any portion of the Settlement were filed by members of Subclass B.

* * *

Filed : November 13, 1990

U.S. Bankruptcy Court, S.D.N.Y.

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Proof of Claim/Interest. No. 6532

In re : Drexel Burnham Lambert Incorporated 90 B 11646

Name of Debtor Company :

Drexel Burnham Lambert Incorporated

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1. Name of claimant: William Leighton, 249 West 11th Street, New York, N.Y. 10014, (212) 255-0001, on behalf of himself as a former shareholder of

Beatrice Companies, Inc., a Delaware corporation ("Beatrice") and on behalf of all persons who had bought their shares of the common stock of Beatrice Companies, Inc. before April 17, 1986, the Effective Time of the merger of Beatrice into BCI Holdings Corporation, a Delaware corporation, ("the class").

Amount of Claim Asserted by claimant on behalf of the class:
$86,187,500 (eighty-six million one hundred and eighty-seven thousand five hundred United States dollars). Number of Beatrice common shares owned by the class : approximately 113,840,665.

Claimant's Social Security Number : 094-30-3098.

2. The Debtor was, at the time of the filing of the petition initiating this case and still is, liable to the claimant class in the sum of

$86,187,500.00.

3. The consideration for this ground of liability is as follows :

On March 11, 1986, BCI Holdings Corporation, a Delaware Corporation, offered by prospectus to effect the Beatrice-BCI merger subject to the receipt of the proceeds of the Debt Financing consisting of the securities bought by the Debtor. A copy of the title pages of that prospectus is attached. The prospectus itself covers approximately 200 pages.

On April 10, 1986, the Debtor has underwritten and has purchased from BCI Holdings Corporation (i) $600,000,000 in 11⅜ Ten Year Senior Notes, for which it has received an underwriting discount of $16,500,000; (ii) $800,000,000 12½% Twelve Year Senior Subordinated Debentures, for which it has received an

underwriting discount of $25,600,000; (iii) $950,000,000 in 12 3/4% Fifteen Year Subordinated Debentures for which it has received an underwriting discount of $36,587,500; $150,000,000 in junior debentures for which it has received an underwriting discount of $7,500,000, for a total in principal amount of $2,500,000,000, ("the Debt Financing"). Claimant has reason to believe that Debtor had re-sold some of the Debt Securities to partnerships consisting of Debtor's employees.

Funds from the Debt Financing were applied towards the purchase by BCI of Beatrice common stock owned by the claimants which was listed on the New York Stock Exchange through April 17, 1986. The financing of such purchases was in violation of Regulation G under Section 7 of the Securities Exchange Act

of 1934. Section 29 of the Act voids any transaction effected in violation of Regulation G. $40 per common share, or $4,553,626,600 was paid out by BCI for the purchase of such shares, with funds provided, in part, by the Debtor's aforesaid underwritings.

The Debtor was prohibited from purchasing the aforementioned securities from BCI by Section 7(a)(1) of the Investment Company of 1940 because BCI had not registered as an investment company pursuant to the requirements of Section 8 of that Act, nor was it exempted from such registration by order entered in accordance with the procedures and provisions of Sections 3(b)(2) or 6(c) of that Act. Section 47 of the Act voids any contract made in violation of such Sections.

Claimants have been deprived of a

substantial portion of their equity in Beatrice as a result of Debtor's unlawful acts. 1/

4. (a) The claim is founded on BCI's two prospectuses dated April 10, 1986 covering the Senior Notes, the Senior Subordinated Debentures and the Subordinated Debentures. The cover of each such prospectus is attached. Each such prospectus includes more than one hundred pages. Any private offering memorandum that may cover the junior debentures is not available to claimant at this time.

(b) The claim is also founded on BCI's prospectus of March 11, 1986 which was false, misleading and omitted to state material facts necessary to have been stated therein in order not to make the other statements therein made false and misleading, for example:

(i) that warrants for the purchase of BCI Holdings common stock would be purchased by partnerships consisting of Drexel employees;

(ii) that Beatrice would be liquidated and dissolved by May 26, 1986, when it was actually liquidated and dissolved;

(iii) that "no federal or state regulatory requirements remained to be complied with in order to consummate the merger" when, in fact (x) registration of BCI under the 1940 Act had not been made nor had an exemption from the registration requirement been secured, (y) the Debt Financing had not been submitted to the Federal Reserve Board for approval in accordance with Regulation G under Section 7 of the Securities Exchange Act of 1934 and (z) the Bank Financing consisting of

$3,500,000,000 had not been submitted to the Federal Reserve Board for approval in accordance with Regulation U under Section 7 of the 1934 Act.

(iv) that American Brands, Inc. ("AMB") would have been a buyer of 15 Beatrice businesses for a total of about $2,700,000,000 if such businesses had been offered to AMB; in fact, the said businesses were sold, in July, 1987, to E-II Holdings, Inc., a $1,000 corporation formed by Kohlberg, Kravis, Roberts & Co. ("KKR"), BCI's alter ego, for $1,067,542,000 including $476,230,000 as and for "intangible assets".

The Debtor is held liable for any such omission or misstatements by Section 5 of the Securities Act of 1933.

5. Not applicable

6. Not applicable except that

claimant's objections against the consummation of the Beatrice-BCI merger were not heard on the merits by the Delaware courts. Claimant had filed objections with the Delaware Chancery Court at Wilmington, Delaware against the consummation of the Beatrice-BCI merger.

The merger was approved over claimant's objections on April 16, 1986 and became effective on April 17, 1986.

7. No judgment has been rendered on the claim.

8. The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim/interest.

9. This claim/interest is not subject to any setoff or counterclaim.

10. No security interest is held for this claim.

11. This claim is an unsecured claim.

12. This claim has not been obtained by claimant on assignment.

Name of Claimant : William Leighton, on behalf of himself and all other persons similarly situated, ("the class"), as above defined.

Signature : /s/ William Leighton

Address : 249 West 11th Street,
New York, N.Y. 10014

Telephone : (212) 255-0001

Date :November 10, 1990

To : The Drexel Burnham Lambert Group, Inc.
P.O. Box 95
Bowling Green Station
New York, N.Y. 10274-0095

1/ In toto, these acts constituted a manipulative and deceptive device and contrivance in violation of Section 10(b) of the 1934 Act and Rule 10b-5 thereunder. Section 29 of the 1934 Act voids any contract made in violation of other Sections and of rules and regulations thereunder.

Filed : November 13, 1990

U.S. Bankaruptcy Court, S.D.N.Y.

UNITED STATES BANKKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Proof of Claim/Interest. No. 6557

In re : Drexel Burnham Lambert Incorporated 90 B 11646

Name of Debtor Company :

Drexel Burnham Lambert Incorporated

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1. Name of claimant: William Leighton, 249 West 11th Street, New York, N.Y. 10014, (212) 255-0001, on behalf of himself as a shareholder of record of American Brands, Inc. a Delaware corporation ("AMB") and on behalf of all persons similarly situated, ("the class").

Amount of Claim Asserted by claimant on behalf of the class:

$54,375,000 (fifty-four million three hundred and seventy-five thousand United States dollars). Number of AMB common shares owned by the class on March 9, 1990 : approximately 95,843,040.

Claimant's Social Security Number : 094-30-3098.

2.(a) The Debtor was, at the time of the filing of the petition initiating this case and still is, liable to the claimant class in the sum of $54,375,000 with respect to the "junk bonds" hereinafter described under paragraph 3(a).

(b) The Debtor was, at the time of the filing of the petition initiating this case and still is, liable to the claimant class in the sum of $2,776,850 with respect to the 3,515,000 shares of the common stock of E-II Holdings, Inc.

underwritten by Debtor on July 2, 1987 for which Debtor has received an underwriting discount of $.79 per share, for a total of $2,776,850. See paragraph 3(b).

3.(a) The consideration for this ground of liability is as follows :

On July 2, 1987, Debtor has underwritten two issues of "junk bonds" of E-II Holdings, Inc., a Delaware corporation, ("E-II") in the amount of $750,000,000 each for which it has received underwriting discounts as follows : $26,250,000 with respect to the 12.85% Senior Subordinated Notes due 1997 and $28,125,000 with respect to the 13.05% Subordinated Debentures due 1999. Debtor was the sole underwriter of these two issues and purchased their entire principal amount from E-II. Claimant has reason to believe that Debtor may have

sold some of the Debt Securities to limited partnerships consisting of some of Debtor's employees. At May 15, 1987, the capitalization of E-II consisted of $1,000.00.

Debtor purchased these issues from E-II in violation of Section 7(a)(1) of the Investment Company Act of 1940 with the knowledge that E-II would use the proceeds for the purpose of purchasing listed stock in violation of Regulation G under Section 7 of the Securities Exchange Act of 1934. Section 29 of the 1934 Act voids any transaction effected in violation of any provision of the Act and the rules and regulations thereunder.

On July 25, 1987, E-II and certain affiliated persons and entities filed a Schedule 13D with the SEC (the "E-II Schedule 13D") reporting beneficial

ownership by E-II of 7,076,800 shares (or about 6.4%) of the common stock of AMB. The E-II Schedule 13D was carefully crafted to create the misleading impression that E-II was curently engaged in an extensive open market program to quickly acquire up to 24.9% of the common stock of AMB.

The Debtor was prohibited from purchasing the aforementioned securities from E-II by Section 7(a)(1) of the Investment Company of 1940 because E-II had not registered as an investment company pursuant to the requirements of Section 8 of that Act, nor was it exempted from such registration by order entered in accordance with the procedures and provisions of Sections 3(b)(2) or 6(c) of that Act. Section 47 of the Act voids any contract made in violation of such Sections.

Claimants have been deprived of a substantial portion of their equity in AMB as a result of Debtor's unlawful acts, namely $247,153,000. The loss occurred when AMB, feeling itself threatened by E-II's accumulation of its stock, agreed in February, 1988 to pay, and did pay, $17.05 for each share of E-II instead of $13 as tendered for on January 22, 1988. By making such tender offer, AMB removed E-II's threat to its independence. The cover page of AMB's original tender offer, on 35 pages, is attached,

In order to preserve its independence, on January 25, 1988, AMB also made a tender offer for all of the "junk bonds" underwritten by Debtor, at 103% of the principal amount of the Senior Subordinated Notes and at 104% of the principal amount of the Notes. The

cover page of this tender offer is also attached. The total amount of capital required for these purchases came to $1,552,500,000 the borrowing of which cost AMB substantial fees. Because the minimum condition (51% of the outstanding "junk bonds") had not been satisfied, AMB did not purchase any "junk bonds" and is being sued in the United States District Court for the Southern District of New York by the holders of some $500,000,000 in principal amount of such bonds for alleged violations of the securities laws. No such suit would have been possible if Debtor had not underwritten the "junk bonds".

AMB's payment of $17.05 per E-II share is the result of a manipulative device and contrivance, in violation of Section 10(b) of the Securities Exchange

Act of 1934 and Rule 10b-5 thereunder, which had the object of forcing AMB to pay $17.05 per E-II share instead of $13 under the threat posed by E-II's intentions with respect to AMB, as disclosed in the E-II Schedule 13D. The threat would not have materialized and AMB's stockholders' equity would not have been diminished by $247,153,000 if Debtor had not underwritten E-II's debt offerings.

(b) On July 2, 1987, Debtor has participated, to the extent of 3,515,000 shares, in the underwriting of an initial public offering of the common stock of E-II Holdings, Inc. ("E-II"). On the day of its incorporation, E-II had a capitalization of $1,000.00. The purpose of E-II's creation was to acquire from BCI Holdings Corporation 15 Beatrice businesses and to force

American Brands, Inc.,("AMB") in February, 1988, to purchase these businesses at an inflated price. In fact, on February 20, 1988, AMB did purchase E-II at $17.05 per common share in a tender offer which had originally been for $13 per share.

Debtor knew, or should have known, that the creation of E-II was a manipulative and deceptive device and contrivance, conceived in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10(b)-5 thereunder for the purpose of inflating the price at which the 15 Beatrice businesses were ultimately sold to AMB. Section 29(b) of the 1934 voids the underwriting contract pursuant to which Debtor has realized profits from that underwriting.

4. The claim is founded on E-II's prospectus dated July 2, 1987 with

respect to the Senior Subordinated Debentures and the Subordinated Debentures (on more than one hundred pages) and on another prospectus (on 68 pages) relative to the issuance of 23,000,000 shares of E-II common stock in an Initial Public Offering of which Debtor has underwritten 3,515,000 shares. The cover page of each such prospectus is attached.

5. Not applicable

6. Not applicable except that claimant's objections to the consummation of the AMB - E-II merger were not heard on the merits by the Delaware courts. Claimant had filed objections to the consummation of the AMB - E-II merger with the Delaware Chancery Court at Wilmington, Delaware. Claimant is also seeking to intervene in the pending lawsuit by certain

bondholders against AMB, see supra, page 3, first paragraph.

The merger was approved over claimant's objections on October 28, 1988.

8. Not applicable.

9. This claim/interest is not subject to any setoff or counterclaim.

10. No security interest is held for this claim.

11. This claim is an unsecured claim.

12. This claim has not been obtained by claimant on assignment.

Name of Claimant : William Leighton, on behalf of himself as a shareholder of record of American Brands, Inc. and all other persons similarly situated.

Signature : /s/ William Leighton

Address : 249 West 11th Street
New York,, N.Y. 10014

Telephone : (212) 255-0001

Date : November 8, 1990

To : The Drexel Burnham Lambert Group, Inc.
P.O. Box 95
Bowling Green Station
New York, N.Y. 10274-0095